Montana Legislative History

Chapter: 501 Session L: 1995 **Checklist of Bill History**

Bill Number: 371 House / Senate

- History and Final Status Sheet ☑
- Introduced Bill ☑
- Fiscal Note ☑
- Third Reading Bill ☑
- Final Version of Bill ☑

House	**Senate**
Committee: Natural Resources	Committee:
Hearing Date(s): March 20, 1995 March 21, 1995	Hearing Date(s): Feb. 13, 1995 Feb 18, 1995
Committee Report: March 22, 1995	Committee Report: Feb. 18, 1995

Conference Committee

Hearing Date(s): n/a

Conference Committee Report:

Compiler Notes

Compiled by: Sonia Lanni

Date: 11-6-2023

Notes:

SENATE

INTRODUCED BY Gratke BILL NO. 371

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "OUTSTANDING RESOURCE WATERS"; IDENTIFYING CERTAIN STATE WATERS AS OUTSTANDING RESOURCE WATERS; ESTABLISHING A PROCESS FOR STATE CLASSIFICATION OF OTHER WATERS AS OUTSTANDING RESOURCE WATERS; IDENTIFYING ACTIVITIES THAT ARE EXEMPT FROM THE WATER QUALITY NONDEGRADATION REVIEW PROCESS; AND AMENDING SECTIONS 75-5-103, 75-5-301, AND 75-5-303, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the department of health and environmental sciences the authority to adopt administrative rules. It is the intent of the legislature that this legislation and the rules adopted pursuant to this legislation serve as Montana's regulatory scheme for both outstanding national resource waters and outstanding state resource waters. It is the further intent of the legislature that surface and ground water in Montana be designated as outstanding resource waters only if there is no other reasonable means of protecting the water. The legislature intends that because this designation may severely limit future use of the designated water, the designation should be accomplished only after a very thorough examination of the environmental, social, and economic impacts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-5-103, MCA, is amended to read:

"75-5-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(4) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant

pursuant to 75-5-301(5)(c).

(5) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(7) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged into state waters.

(8) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(9) "High-quality waters" means state waters whose quality for a parameter is better than standards established pursuant to 75-5-301. All waters are high-quality water unless classified by the board within a classification for waters that are not suitable for human consumption or not suitable for growth and propagation of fish and associated aquatic life.

(10) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(11) "Interested person" means a person who has submitted oral or written comments on the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(12) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(13) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

(14) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(15) "Outstanding resource waters" means:

(a) state surface waters located in areas designated as national parks or national wilderness areas as of [the effective date of this act]; or

(b) other surface waters or ground waters classified by the board under the provisions of [section 3] and approved by the legislature.

(16) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(16)~~(17) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(17)~~(18) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(18)~~(19) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(19)~~(20) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of state waters which exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge, seepage, drainage, infiltration or flow which is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

~~(20)~~(21) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(21)~~(22) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(22)~~(23) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

~~(23)~~(24) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground; however, this subsection does not apply to irrigation waters where the waters are used up within the irrigation system and the waters are not returned to any other state waters.

~~(24)~~(25) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(25)~~(26) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(26)~~(27) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water."

NEW SECTION. **Section 2. Outstanding resource waters -- statement of purpose.** (1) The legislature, understanding the requirements of applicable federal law and the uniqueness of Montana's water resource, recognizes that certain state waters are of such environmental, ecological, or economic value that the state should prohibit, to the greatest extent practicable, changes to the existing water quality of those waters. Outstanding resource waters must be afforded the greatest protection feasible under state law, after thorough examination.

(2) The purpose of this section and [section 3] is to provide this protection and to provide guidance to the board in establishing rules to accomplish that level of protection.

NEW SECTION. **Section 3. Outstanding resource water classification -- rules -- criteria -- limitations -- procedure.** (1) As provided under the provisions of 75-5-301 and this section, the board may adopt rules regarding the classification of waters as outstanding resource waters. Neither this section nor rules adopted pursuant to this section apply to an activity that is identified as nonsignificant under 75-5-301(5)(c) and that is exempted from nondegradation review required under 75-5-303.

(2) The department may not:

(a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or

(b) grant an authorization to degrade if that authorization would cause significant degradation, as defined by board rules adopted under 75-5-301(5), in outstanding resource waters.

(3) (a) A person may petition the board for rulemaking to classify waters as outstanding resource waters. The board shall initially review a petition against the criteria identified in subsection (3)(c) to determine whether the petition contains sufficient credible information for the board to accept the petition.

(b) The board may reject a petition without further review if it determines that the petition does not contain the sufficient credible information required by subsection (3)(a). If the board rejects a petition under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's deficiencies.

(c) The board may not adopt a rule classifying state waters as outstanding resource waters until it accepts a petition and finds that, based on a preponderance of the evidence:

(i) the waters identified in the petition constitute an outstanding resource based on the criteria provided in subsection (4);

(ii) the classification is necessary to protect the outstanding resource identified under subsection (3)(a); and

(iii) there is no other effective process available that will achieve the necessary protection.

(4) The board shall consider the following criteria in determining whether certain state waters are outstanding resource waters. However, the board may determine that compliance with one or more of these criteria is insufficient to warrant classification of the water as an outstanding resource water. The board shall consider:

(a) whether the waters have been designated as wild and scenic;

(b) the presence of endangered or threatened species in the waters;

(c) the presence of an outstanding recreational fishery in the waters;

(d) whether the waters provide the only source of suitable water for a municipality or industry;

(e) whether the waters provide the only source of suitable water for domestic water supply; and

(f) other factors that indicate outstanding environmental or economic values not specifically mentioned in this subsection (4).

(5) After acceptance of a petition, the board shall require the preparation of an environmental impact statement, as provided under Title 75, chapter 1, part 2, when classification as an outstanding

resource water may cause significant adverse impacts to the environment, including significant adverse impacts to social or economic values.

(6) The board shall consult with other relevant state agencies when reviewing outstanding resource water classification petitions.

(7) (a) In accordance with 2-4-315, the board may deny an accepted outstanding resource water classification petition if it finds that:

(i) the requirements of subsection (3) have not been met; or

(ii) based on information available to the board from the environmental impact statement or otherwise, approving the outstanding resource waters classification petition would cause significant adverse environmental, social, or economic impacts.

(b) If the board denies the petition, it shall identify its reasons for petition denial.

(8) A rule classifying state waters as outstanding resource waters under this section may be adopted but is not effective until approved by the legislature.

(9) The board may not postpone or deny an application for an authorization to degrade state waters under 75-3-303 pending:

(a) board action on an outstanding resource water classification petition regarding those waters; or

(b) legislative approval of board action designating those waters as outstanding resource waters.

Section 4. Section 75-5-301, MCA, is amended to read:

"**75-5-301. Classification and standards for state waters.** Consistent with the provisions of 75-5-302 through 75-5-307 and 80-15-201, the board shall:

(1) establish and modify the classification of all waters in accordance with their present and future most beneficial uses;

(2) formulate standards of water purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention;

(3) review, from time to time at intervals of not more than 3 years, established classifications of waters and standards of water purity and classification;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified, and requiring that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

(a) provide a procedure for department review and authorization of degradation;

(b) establish criteria for the following:

(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality; and

(c) establish criteria for determining whether a proposed activity or class of activities, in addition to those activities identified in [section 6], will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

(i) equates significance with the potential for harm to human health or the environment;

(ii) considers both the quantity and the strength of the pollutant;

(iii) considers the length of time the degradation will occur; and

(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).

(7) adopt rules to implement this section."

Section 5. Section 75-5-303, MCA, is amended to read:

"**75-5-303. Nondegradation policy.** (1) Existing uses of state waters and the level of water quality necessary to protect those uses must be maintained and protected.

(2) Unless authorized by the department under subsection (3) or exempted from review under

[section 6], the quality of high-quality waters must be maintained.

(3) The department may not authorize degradation of high-quality waters unless it has been affirmatively demonstrated by a preponderance of evidence to the department that:

(a) degradation is necessary because there are no economically, environmentally, and technologically feasible alternatives to the proposed project that would result in no degradation;

(b) the proposed project will result in important economic or social development that exceeds the benefit to society of maintaining existing high-quality waters and exceeds the costs to society of allowing degradation of high-quality waters;

(c) existing and anticipated use of state waters will be fully protected; and

(d) the least degrading water quality protection practices determined by the department to be economically, environmentally, and technologically feasible will be fully implemented by the applicant prior to and during the proposed activity.

(4) The department shall issue a preliminary decision either denying or authorizing degradation and shall provide public notice and a 30-day comment period prior to issuing a final decision. The department's preliminary and final decisions must include:

(a) a statement of the basis for the decision; and

(b) a detailed description of all conditions applied to any authorization to degrade state waters, including, when applicable, monitoring requirements, required water protection practices, reporting requirements, effluent limits, designation of the mixing zones, the limits of degradation authorized, and methods of determining compliance with the authorization for degradation.

(5) An interested person wishing to challenge a final department decision may request a hearing before the board within 30 days of the final department decision. The contested case procedures of Title 2, chapter 4, part 6, apply to a hearing under this section.

(6) Every 5 years, the department shall review authorizations to degrade state waters. To enable the department to adequately review authorizations as required under this section, the authorization holder shall revise the initial authorization application no sooner than 3 1/2 years and no later than 4 years after the date of the authorization or the date of the latest department review. The specific revised information required must be determined by the department. If, based on the review, the department determines that the standards and objectives of 75-5-303 or the rules adopted pursuant to 75-5-303 are not being met, it shall revoke or modify the authorization. A decision by the department to revoke or modify an authorization

may be appealed to the board.

(7) The board may not issue an authorization to degrade state waters that are classified as outstanding resource waters.

(8) The board shall adopt rules to implement this section."

NEW SECTION. **Section 6. Nonsignificant activities.** (1) The categories or classes of activities identified in subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).

(2) The following categories or classes of activities are not subject to the provisions of 75-3-303:

(a) activities that are nonpoint sources of pollution when reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected;

(b) use of agricultural chemicals in accordance with a specific agricultural chemical ground water management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental protection agency-approved label and when existing and anticipated uses will be fully protected;

(c) changes in existing water quality resulting from an emergency or remedial activity that is designed to protect public health or the environment and is approved, authorized, or required by the department;

(d) changes in existing water quality resulting from treatment of a public water supply system, as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar means that is designed to protect the public health or the environment and that is approved, authorized, or required by the department;

(e) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water well or monitoring well drilling, development, or abandonment, if used according to department-approved water quality protection practices;

(f) short-term changes in existing water quality resulting from activities authorized by the department pursuant to 75-5-308;

(g) land application of animal waste, domestic septage, or waste from public sewage treatment systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

(h) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from a public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and constructed in accordance with Title 75, chapter 6;

(i) discharges of water from water well or monitoring well tests, hydrostatic pressure and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs, conducted in accordance with department-approved water quality protection practices;

(j) oil and gas drilling, production, abandonment, plugging, and restoration activities performed in accordance with Title 82, chapter 10, or Title 82, chapter 11;

(k) short-term changes in existing water quality resulting from ordinary and everyday activities of humans or domesticated animals, including but not limited to:

(i) such recreational activities as boating, hiking, fishing, wading, swimming, and camping;

(ii) fording of streams or other bodies of water by vehicular or other means; and

(iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated animals;

(l) coal and uranium prospecting performed in accordance with Title 82, chapter 2;

(m) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part 5;

(n) hazardous waste management facilities permitted and operated in accordance with Title 75, chapter 10, part 4;

(o) nonpoint sources of pollution that cause short-term changes in existing water quality resulting from:

(i) activities authorized under Title 75, chapter 7, part 1; or

(ii) customary activities involving the use of water established by an existing water right or permit recognized under Montana law; and

(p) any other activity that is nonsignificant because of its low potential for harm to human health or to the environment and its conformance with the guidance found in 75-5-301(5)(c).

NEW SECTION. **Section 7. Codification instruction.** [Sections 2, 3, and 6] are intended to be codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3,

apply to [sections 2, 3, and 6].

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0371, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act defining "outstanding resource waters" and identifying certain state waters as outstanding resource waters.

ASSUMPTIONS:
1. Based on the fact that petitioning for designation as outstanding resource waters has been possible since 1988, and this bill makes the process more restrictive, it is assumed that few, if any, petitions for designation as outstanding resource waters will be filed in the future.

FISCAL IMPACT:
Passage of SB371 will have no fiscal impact on state government.

Dave Lewis 2-17-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

2-17-95
LORENTS GROSFIELD, PRIMARY SPONSOR DATE

Fiscal Note for SB0371, as introduced
SB 371

APPROVED BY COM ON
NATURAL RESOURCES

SENATE BILL NO. 371

INTRODUCED BY GROSFIELD

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "OUTSTANDING RESOURCE WATERS"; IDENTIFYING CERTAIN STATE WATERS AS OUTSTANDING RESOURCE WATERS; ESTABLISHING A PROCESS FOR STATE CLASSIFICATION OF OTHER WATERS AS OUTSTANDING RESOURCE WATERS; IDENTIFYING ACTIVITIES THAT ARE EXEMPT FROM THE WATER QUALITY NONDEGRADATION REVIEW PROCESS; AND AMENDING SECTIONS 75-5-103, 75-5-301, AND 75-5-303, MCA."

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A statement of intent is required for this bill because the bill gives the ~~department~~ BOARD of health and environmental sciences the authority to adopt administrative rules. It is the intent of the legislature that this legislation and the rules adopted pursuant to this legislation serve as Montana's regulatory scheme for both outstanding national resource waters and outstanding state resource waters. It is the further intent of the legislature that surface and ground water in Montana be designated as outstanding resource waters only if there is no other reasonable means of protecting the water. The legislature intends that because this designation may severely limit future use of the designated water, the designation should be accomplished only after a very thorough examination of the environmental, social, and economic impacts.

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(15) "Outstanding resource waters" means:

(a) state surface waters located ~~in~~ WHOLLY WITHIN THE BOUNDARIES OF areas designated as national parks or national wilderness areas as of [the effective date of this act]; or

(b) other surface waters or ground waters classified by the board under the provisions of [section 3] and approved by the legislature.

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(a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or

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(3) (a) A person may petition the board for rulemaking to classify waters as outstanding resource waters. The board shall initially review a petition against the criteria identified in subsection (3)(c) to determine whether the petition contains sufficient credible information for the board to accept the petition.

(b) The board may reject a petition without further review if it determines that the petition does not contain the sufficient credible information required by subsection (3)(a). If the board rejects a petition under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's deficiencies.

(c) The board may not adopt a rule classifying state waters as outstanding resource waters until it accepts a petition and finds that, based on a preponderance of the evidence:

(i) the waters identified in the petition constitute an outstanding resource based on the criteria provided in subsection (4);

(ii) the classification is necessary to protect the outstanding resource identified under subsection (3)(a); and

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(a) whether the waters have been designated as wild and scenic;

(b) the presence of endangered or threatened species in the waters;

(c) the presence of an outstanding recreational fishery in the waters;

(d) whether the waters provide the only source of suitable water for a municipality or industry;

(e) whether the waters provide the only source of suitable water for domestic water supply; and

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(6) The board shall consult with other relevant state agencies when reviewing outstanding resource water classification petitions.

(7) (a) In accordance with 2-4-315, the board may deny an accepted outstanding resource water classification petition if it finds that:

(i) the requirements of subsection (3) have not been met; or

(ii) based on information available to the board from the environmental impact statement or otherwise, approving the outstanding resource waters classification petition would cause significant adverse environmental, social, or economic impacts.

(b) If the board denies the petition, it shall identify its reasons for petition denial.

(8) A rule classifying state waters as outstanding resource waters under this section may be adopted but is not effective until approved by the legislature.

(9) The board may not postpone or deny an application for an authorization to degrade state waters under 75-3-303 pending:

(a) board action on an outstanding resource water classification petition regarding those waters; or

(b) legislative approval of board action designating those waters as outstanding resource waters.

Section 4. Section 75-5-301, MCA, is amended to read:

"**75-5-301. Classification and standards for state waters.** Consistent with the provisions of 75-5-302 through 75-5-307 and 80-15-201, the board shall:

(1) establish and modify the classification of all waters in accordance with their present and future most beneficial uses;

(2) formulate standards of water purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention;

(3) review, from time to time at intervals of not more than 3 years, established classifications of waters and standards of water purity and classification;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified, and requiring that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

(a) provide a procedure for department review and authorization of degradation;

(b) establish criteria for the following:

(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality; and

(c) establish criteria for determining whether a proposed activity or class of activities, in addition to those activities identified in [section 6], will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

(i) equates significance with the potential for harm to human health or the environment;

(ii) considers both the quantity and the strength of the pollutant;

(iii) considers the length of time the degradation will occur; and

(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).

(7) adopt rules to implement this section."

Section 5. Section 75-5-303, MCA, is amended to read:

"**75-5-303. Nondegradation policy.** (1) Existing uses of state waters and the level of water quality necessary to protect those uses must be maintained and protected.

(2) Unless authorized by the department under subsection (3) or exempted from review under

[section 6], the quality of high-quality waters must be maintained.

(3) The department may not authorize degradation of high-quality waters unless it has been affirmatively demonstrated by a preponderance of evidence to the department that:

(a) degradation is necessary because there are no economically, environmentally, and technologically feasible alternatives to the proposed project that would result in no degradation;

(b) the proposed project will result in important economic or social development that exceeds the benefit to society of maintaining existing high-quality waters and exceeds the costs to society of allowing degradation of high-quality waters;

(c) existing and anticipated use of state waters will be fully protected; and

(d) the least degrading water quality protection practices determined by the department to be economically, environmentally, and technologically feasible will be fully implemented by the applicant prior to and during the proposed activity.

(4) The department shall issue a preliminary decision either denying or authorizing degradation and shall provide public notice and a 30-day comment period prior to issuing a final decision. The department's preliminary and final decisions must include:

(a) a statement of the basis for the decision; and

(b) a detailed description of all conditions applied to any authorization to degrade state waters, including, when applicable, monitoring requirements, required water protection practices, reporting requirements, effluent limits, designation of the mixing zones, the limits of degradation authorized, and methods of determining compliance with the authorization for degradation.

(5) An interested person wishing to challenge a final department decision may request a hearing before the board within 30 days of the final department decision. The contested case procedures of Title 2, chapter 4, part 6, apply to a hearing under this section.

(6) Every 5 years, the department shall review authorizations to degrade state waters. To enable the department to adequately review authorizations as required under this section, the authorization holder shall revise the initial authorization application no sooner than 3 1/2 years and no later than 4 years after the date of the authorization or the date of the latest department review. The specific revised information required must be determined by the department. If, based on the review, the department determines that the standards and objectives of 75-5-303 or the rules adopted pursuant to 75-5-303 are not being met, it shall revoke or modify the authorization. A decision by the department to revoke or modify an authorization

may be appealed to the board.

(7) The board may not issue an authorization to degrade state waters that are classified as outstanding resource waters.

(8) The board shall adopt rules to implement this section."

NEW SECTION. **Section 6. Nonsignificant activities.** (1) The categories or classes of activities identified in subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).

(2) The following categories or classes of activities are not subject to the provisions of 75-3-303:

(A) EXISTING ACTIVITIES THAT ARE NONPOINT SOURCES OF POLLUTION AS OF APRIL 29, 1993;

~~(a)~~(B) activities that are nonpoint sources of pollution INITIATED AFTER APRIL 29, 1993, when reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected;

~~(b)~~(C) use of agricultural chemicals in accordance with a specific agricultural chemical ground water management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental protection agency-approved label and when existing and anticipated uses will be fully protected;

~~(c)~~(D) changes in existing water quality resulting from an emergency or remedial activity that is designed to protect public health or the environment and is approved, authorized, or required by the department;

~~(d)~~(E) changes in existing water quality resulting from treatment of a public water supply system, as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar means that is designed to protect the public health or the environment and that is approved, authorized, or required by the department;

~~(e)~~(F) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water well or monitoring well drilling, development, or abandonment, if used according to department-approved water quality protection practices;

~~(f)~~(G) short-term changes in existing water quality resulting from activities authorized by the department pursuant to 75-5-308;

~~(g)~~(H) land application of animal waste, domestic septage, or waste from public sewage treatment systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

~~(h)~~(I) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from a public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and constructed in accordance with Title 75, chapter 6;

~~(i)~~(J) discharges of water from water well or monitoring well tests, hydrostatic pressure and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs, conducted in accordance with department-approved water quality protection practices;

~~(j)~~(K) oil and gas drilling, production, abandonment, plugging, and restoration activities performed in accordance with Title 82, chapter 10, or Title 82, chapter 11;

~~(k)~~(L) short-term changes in existing water quality resulting from ordinary and everyday activities of humans or domesticated animals, including but not limited to:

(i) such recreational activities as boating, hiking, fishing, wading, swimming, and camping;

(ii) fording of streams or other bodies of water by vehicular or other means; and

(iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated animals;

~~(l)~~(M) coal and uranium prospecting performed in accordance with Title 82, chapter ~~2~~ 4;

~~(m)~~(N) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part 5;

~~(n)~~(O) hazardous waste management facilities permitted and operated in accordance with Title 75, chapter 10, part 4;

(P) METALLIC AND NONMETALLIC MINERAL EXPLORATION PERFORMED IN ACCORDANCE WITH TITLE 82, CHAPTER 2, PARTS 3 AND 4;

~~(o)~~(Q) nonpoint sources of pollution that cause short-term changes in existing water quality resulting from:

(i) activities authorized under Title 75, chapter 7, part 1; or

(ii) customary activities involving the use of water established by an existing water right or permit recognized under Montana law; ~~and~~

(R) THE MAINTENANCE, REPAIR, OR REPLACEMENT OF DAMS, DIVERSIONS, WEIRS, OR OTHER CONSTRUCTED WORKS THAT ARE RELATED TO EXISTING WATER RIGHTS AND THAT ARE WITHIN WILDERNESS AREAS SO LONG AS EXISTING AND ANTICIPATED BENEFICIAL USES ARE PROTECTED AND AS LONG AS THE CHANGES IN EXISTING WATER QUALITY RELATIVE TO THE PROJECT ARE SHORT TERM; AND

~~(p)~~(S) any other activity that is nonsignificant because of its low potential for harm to human health or to the environment and its conformance with the guidance found in 75-5-301(5)(c).

NEW SECTION. **Section 7. Codification instruction.** [Sections 2, 3, and 6] are intended to be codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to [sections 2, 3, and 6].

-END-

SENATE BILL NO. 371

INTRODUCED BY GROSFIELD

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "OUTSTANDING RESOURCE WATERS"; IDENTIFYING CERTAIN STATE WATERS AS OUTSTANDING RESOURCE WATERS; ESTABLISHING A PROCESS FOR STATE CLASSIFICATION OF OTHER WATERS AS OUTSTANDING RESOURCE WATERS; IDENTIFYING ACTIVITIES THAT ARE EXEMPT FROM THE WATER QUALITY NONDEGRADATION REVIEW PROCESS; AND AMENDING SECTIONS 75-5-103, 75-5-301, AND 75-5-303, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the ~~department~~ BOARD of health and environmental sciences the authority to adopt administrative rules. It is the intent of the legislature that this legislation and the rules adopted pursuant to this legislation serve as Montana's regulatory scheme for both outstanding national resource waters and outstanding state resource waters. It is the further intent of the legislature that surface and ground water in Montana be designated as outstanding resource waters only if there is no other reasonable means of protecting the water. The legislature intends that because this designation may severely limit future use of the designated water, the designation should be accomplished only after a very thorough examination of the environmental, social, and economic impacts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

HOUSE STANDING COMMITTEE REPORT

March 22, 1995

Mr. Speaker: We, the committee on **Natural Resources** report that **Senate Bill 371** (third reading copy -- blue) **be concurred in as amended.**

Signed: Dick Knox
Dick Knox, Chair

And, that such amendments read: **Carried by: Rep. Curtiss**

1. Page 6, line 15.
Strike: "75-3-303"
Insert: "75-5-303 based on"

2. Page 9, line 10.
Strike: "75-3-303"
Insert: "75-5-303"

3. Page 10, line 14.
Following: "hiking,"
Insert: "hunting,"

4. Page 10, line 24.
Following: "EXPLORATION"
Insert: "permitted under and"

-END-

SB371

HOUSE

661026SC.Hdh

Committee Vote:
Yes 12, No 6.

HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 371
Representative Story

March 27, 1995 3:22 pm

Mr. Chairman: I move to amend **Senate Bill 371** (third reading copy -- blue).

Signed: _____
Representative Story

And, that such amendments to Senate Bill 371 read as follows:

1. Page 10, line 25.
Strike: "2"
Insert: "4"

-END-

ADOPT 95-0

REJECT

SB 371

HOUSE

SENATE BILL NO. 371

INTRODUCED BY GROSFIELD

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "OUTSTANDING RESOURCE WATERS"; IDENTIFYING CERTAIN STATE WATERS AS OUTSTANDING RESOURCE WATERS; ESTABLISHING A PROCESS FOR STATE CLASSIFICATION OF OTHER WATERS AS OUTSTANDING RESOURCE WATERS; IDENTIFYING ACTIVITIES THAT ARE EXEMPT FROM THE WATER QUALITY NONDEGRADATION REVIEW PROCESS; AND AMENDING SECTIONS 75-5-103, 75-5-301, AND 75-5-303, MCA."

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A statement of intent is required for this bill because the bill gives the ~~department~~ BOARD of health and environmental sciences the authority to adopt administrative rules. It is the intent of the legislature that this legislation and the rules adopted pursuant to this legislation serve as Montana's regulatory scheme for both outstanding national resource waters and outstanding state resource waters. It is the further intent of the legislature that surface and ground water in Montana be designated as outstanding resource waters only if there is no other reasonable means of protecting the water. The legislature intends that because this designation may severely limit future use of the designated water, the designation should be accomplished only after a very thorough examination of the environmental, social, and economic impacts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-5-103, MCA, is amended to read:

"**75-5-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(4) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant

pursuant to 75-5-301(5)(c).

(5) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(7) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged into state waters.

(8) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(9) "High-quality waters" means state waters whose quality for a parameter is better than standards established pursuant to 75-5-301. All waters are high-quality water unless classified by the board within a classification for waters that are not suitable for human consumption or not suitable for growth and propagation of fish and associated aquatic life.

(10) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(11) "Interested person" means a person who has submitted oral or written comments on the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(12) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(13) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

(14) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(15) "Outstanding resource waters" means:

(a) state surface waters located ~~in~~ WHOLLY WITHIN THE BOUNDARIES OF areas designated as national parks or national wilderness areas as of [the effective date of this act]; or

(b) other surface waters or ground waters classified by the board under the provisions of [section 3] and approved by the legislature.

(16) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(16)~~(17) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(17)~~(18) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(18)~~(19) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(19)~~(20) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of state waters which exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge, seepage, drainage, infiltration or flow which is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

~~(20)~~(21) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(21)~~(22) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(22)~~(23) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

~~(23)~~(24) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground; however, this subsection does not apply to irrigation waters where the waters are used up within the irrigation system and the waters are not returned to any other state waters.

~~(24)~~(25) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(25)~~(26) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(26)~~(27) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water."

NEW SECTION. **Section 2. Outstanding resource waters -- statement of purpose.** (1) The legislature, understanding the requirements of applicable federal law and the uniqueness of Montana's water resource, recognizes that certain state waters are of such environmental, ecological, or economic value that the state should prohibit, to the greatest extent practicable, changes to the existing water quality of those waters. Outstanding resource waters must be afforded the greatest protection feasible under state law, after thorough examination.

(2) The purpose of this section and [section 3] is to provide this protection and to provide guidance to the board in establishing rules to accomplish that level of protection.

NEW SECTION. **Section 3. Outstanding resource water classification -- rules -- criteria -- limitations -- procedure.** (1) As provided under the provisions of 75-5-301 and this section, the board may adopt rules regarding the classification of waters as outstanding resource waters. Neither this section nor rules adopted pursuant to this section apply to an activity that is identified as nonsignificant under 75-5-301(5)(c) and that is exempted from nondegradation review required under 75-5-303.

(2) The department may not:

(a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or

(b) grant an authorization to degrade if that authorization would cause significant degradation, as defined by board rules adopted under 75-5-301(5), in outstanding resource waters.

(3) (a) A person may petition the board for rulemaking to classify waters as outstanding resource waters. The board shall initially review a petition against the criteria identified in subsection (3)(c) to determine whether the petition contains sufficient credible information for the board to accept the petition.

(b) The board may reject a petition without further review if it determines that the petition does not contain the sufficient credible information required by subsection (3)(a). If the board rejects a petition under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's deficiencies.

(c) The board may not adopt a rule classifying state waters as outstanding resource waters until it accepts a petition and finds that, based on a preponderance of the evidence:

(i) the waters identified in the petition constitute an outstanding resource based on the criteria provided in subsection (4);

(ii) the classification is necessary to protect the outstanding resource identified under subsection (3)(a); and

(iii) there is no other effective process available that will achieve the necessary protection.

(4) The board shall consider the following criteria in determining whether certain state waters are outstanding resource waters. However, the board may determine that compliance with one or more of these criteria is insufficient to warrant classification of the water as an outstanding resource water. The board shall consider:

(a) whether the waters have been designated as wild and scenic;

(b) the presence of endangered or threatened species in the waters;

(c) the presence of an outstanding recreational fishery in the waters;

(d) whether the waters provide the only source of suitable water for a municipality or industry;

(e) whether the waters provide the only source of suitable water for domestic water supply; and

(f) other factors that indicate outstanding environmental or economic values not specifically mentioned in this subsection (4).

(5) After acceptance of a petition, the board shall require the preparation of an environmental impact statement, as provided under Title 75, chapter 1, part 2, when classification as an outstanding

resource water may cause significant adverse impacts to the environment, including significant adverse impacts to social or economic values.

(6) The board shall consult with other relevant state agencies when reviewing outstanding resource water classification petitions.

(7) (a) In accordance with 2-4-315, the board may deny an accepted outstanding resource water classification petition if it finds that:

(i) the requirements of subsection (3) have not been met; or

(ii) based on information available to the board from the environmental impact statement or otherwise, approving the outstanding resource waters classification petition would cause significant adverse environmental, social, or economic impacts.

(b) If the board denies the petition, it shall identify its reasons for petition denial.

(8) A rule classifying state waters as outstanding resource waters under this section may be adopted but is not effective until approved by the legislature.

(9) The board may not postpone or deny an application for an authorization to degrade state waters under ~~75-3-303~~ 75-5-303 BASED ON pending:

(a) board action on an outstanding resource water classification petition regarding those waters; or

(b) legislative approval of board action designating those waters as outstanding resource waters.

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"**75-5-301. Classification and standards for state waters.** Consistent with the provisions of 75-5-302 through 75-5-307 and 80-15-201, the board shall:

(1) establish and modify the classification of all waters in accordance with their present and future most beneficial uses;

(2) formulate standards of water purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention;

(3) review, from time to time at intervals of not more than 3 years, established classifications of waters and standards of water purity and classification;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified, and requiring that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

(a) provide a procedure for department review and authorization of degradation;

(b) establish criteria for the following:

(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality; and

(c) establish criteria for determining whether a proposed activity or class of activities, in addition to those activities identified in [section 6], will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

(i) equates significance with the potential for harm to human health or the environment;

(ii) considers both the quantity and the strength of the pollutant;

(iii) considers the length of time the degradation will occur; and

(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).

(7) adopt rules to implement this section."

Section 5. Section 75-5-303, MCA, is amended to read:

"**75-5-303. Nondegradation policy.** (1) Existing uses of state waters and the level of water quality necessary to protect those uses must be maintained and protected.

(2) Unless authorized by the department under subsection (3) or exempted from review under

[section 6], the quality of high-quality waters must be maintained.

(3) The department may not authorize degradation of high-quality waters unless it has been affirmatively demonstrated by a preponderance of evidence to the department that:

(a) degradation is necessary because there are no economically, environmentally, and technologically feasible alternatives to the proposed project that would result in no degradation;

(b) the proposed project will result in important economic or social development that exceeds the benefit to society of maintaining existing high-quality waters and exceeds the costs to society of allowing degradation of high-quality waters;

(c) existing and anticipated use of state waters will be fully protected; and

(d) the least degrading water quality protection practices determined by the department to be economically, environmentally, and technologically feasible will be fully implemented by the applicant prior to and during the proposed activity.

(4) The department shall issue a preliminary decision either denying or authorizing degradation and shall provide public notice and a 30-day comment period prior to issuing a final decision. The department's preliminary and final decisions must include:

(a) a statement of the basis for the decision; and

(b) a detailed description of all conditions applied to any authorization to degrade state waters, including, when applicable, monitoring requirements, required water protection practices, reporting requirements, effluent limits, designation of the mixing zones, the limits of degradation authorized, and methods of determining compliance with the authorization for degradation.

(5) An interested person wishing to challenge a final department decision may request a hearing before the board within 30 days of the final department decision. The contested case procedures of Title 2, chapter 4, part 6, apply to a hearing under this section.

(6) Every 5 years, the department shall review authorizations to degrade state waters. To enable the department to adequately review authorizations as required under this section, the authorization holder shall revise the initial authorization application no sooner than 3 1/2 years and no later than 4 years after the date of the authorization or the date of the latest department review. The specific revised information required must be determined by the department. If, based on the review, the department determines that the standards and objectives of 75-5-303 or the rules adopted pursuant to 75-5-303 are not being met, it shall revoke or modify the authorization. A decision by the department to revoke or modify an authorization

may be appealed to the board.

(7) The board may not issue an authorization to degrade state waters that are classified as outstanding resource waters.

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NEW SECTION. **Section 6. Nonsignificant activities.** (1) The categories or classes of activities identified in subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).

(2) The following categories or classes of activities are not subject to the provisions of ~~75-3-303~~ 75-5-303:

(A) EXISTING ACTIVITIES THAT ARE NONPOINT SOURCES OF POLLUTION AS OF APRIL 29, 1993;

~~(a)~~(B) activities that are nonpoint sources of pollution INITIATED AFTER APRIL 29, 1993, when reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected;

~~(b)~~(C) use of agricultural chemicals in accordance with a specific agricultural chemical ground water management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental protection agency-approved label and when existing and anticipated uses will be fully protected;

~~(c)~~(D) changes in existing water quality resulting from an emergency or remedial activity that is designed to protect public health or the environment and is approved, authorized, or required by the department;

~~(d)~~(E) changes in existing water quality resulting from treatment of a public water supply system, as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar means that is designed to protect the public health or the environment and that is approved, authorized, or required by the department;

~~(e)~~(F) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water well or monitoring well drilling, development, or abandonment, if used according to department-approved water quality protection practices;

~~(f)~~(G) short-term changes in existing water quality resulting from activities authorized by the

department pursuant to 75-5-308;

~~(g)~~(H) land application of animal waste, domestic septage, or waste from public sewage treatment systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

~~(h)~~(I) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from a public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and constructed in accordance with Title 75, chapter 6;

~~(i)~~(J) discharges of water from water well or monitoring well tests, hydrostatic pressure and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs, conducted in accordance with department-approved water quality protection practices;

~~(j)~~(K) oil and gas drilling, production, abandonment, plugging, and restoration activities performed in accordance with Title 82, chapter 10, or Title 82, chapter 11;

~~(k)~~(L) short-term changes in existing water quality resulting from ordinary and everyday activities of humans or domesticated animals, including but not limited to:

(i) such recreational activities as boating, hiking, HUNTING, fishing, wading, swimming, and camping;

(ii) fording of streams or other bodies of water by vehicular or other means; and

(iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated animals;

~~(l)~~(M) coal and uranium prospecting performed in accordance with Title 82, chapter ~~2~~ 4;

~~(m)~~(N) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part 5;

~~(n)~~(O) hazardous waste management facilities permitted and operated in accordance with Title 75, chapter 10, part 4;

(P) METALLIC AND NONMETALLIC MINERAL EXPLORATION PERMITTED UNDER AND PERFORMED IN ACCORDANCE WITH TITLE 82, CHAPTER ~~2~~ 4, PARTS 3 AND 4;

~~(o)~~(Q) nonpoint sources of pollution that cause short-term changes in existing water quality resulting from:

(i) activities authorized under Title 75, chapter 7, part 1; or

(ii) customary activities involving the use of water established by an existing water right or permit recognized under Montana law; ~~and~~

(R) THE MAINTENANCE, REPAIR, OR REPLACEMENT OF DAMS, DIVERSIONS, WEIRS, OR OTHER CONSTRUCTED WORKS THAT ARE RELATED TO EXISTING WATER RIGHTS AND THAT ARE WITHIN WILDERNESS AREAS SO LONG AS EXISTING AND ANTICIPATED BENEFICIAL USES ARE PROTECTED AND AS LONG AS THE CHANGES IN EXISTING WATER QUALITY RELATIVE TO THE PROJECT ARE SHORT TERM; AND

~~(p)~~(S) any other activity that is nonsignificant because of its low potential for harm to human health or to the environment and its conformance with the guidance found in 75-5-301(5)(c).

NEW SECTION. **Section 7. Codification instruction.** [Sections 2, 3, and 6] are intended to be codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to [sections 2, 3, and 6].

-END-

SB 368 INTRODUCED BY KLAMPE

DECLARE LEGISLATIVE PURPOSE IN REGULATING PRACTICE OF DENTURITY

2/11	INTRODUCED		
2/11	FIRST READING		
2/11	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
2/13	FISCAL NOTE REQUESTED		
2/17	FISCAL NOTE RECEIVED		
2/17	FISCAL NOTE PRINTED		
2/18	HEARING		
2/18	TABLED IN COMMITTEE		
2/20	MOTION FAILED TO TAKE FROM COMMITTEE AND PLACE ON 2ND READING	25	25
2/23	MISSED TRANSMITTAL DEADLINE FOR 45TH DAY DIED IN COMMITTEE		

SB 369 INTRODUCED BY CHRISTIAENS, ET AL.

LOCATE LAW ENFORCEMENT ACADEMY IN GREAT FALLS, MONTANA

2/11	INTRODUCED		
2/11	FIRST READING		
2/11	REFERRED TO FINANCE & CLAIMS		
2/13	FISCAL NOTE REQUESTED		
2/15	HEARING		
2/15	REREFERRED TO JOINT SUBCOMMITTEE ON LONG-RANGE PLANNING		
2/17	FISCAL NOTE RECEIVED		
2/17	FISCAL NOTE PRINTED		
2/17	TABLED IN COMMITTEE		
3/24	MISSED TRANSMITTAL DEADLINE FOR 67TH DAY DIED IN COMMITTEE		

SB 370 INTRODUCED BY TOEWS, ET AL.

AUTHORIZE ESTABLISHMENT OF CHARTER SCHOOL UNDER CONTROL OF TRUSTEES OF SCHOOL DISTRICT AS MEANS OF PROVIDING EDUCATIONAL OPPORTUNITIES TO PUBLIC SCHOOL PUPILS

2/11	INTRODUCED		
2/11	FIRST READING		
2/11	REFERRED TO EDUCATION & CULTURAL RESOURCES		
2/15	HEARING		
2/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING PASSED	47	3
2/20	3RD READING PASSED	46	4
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO EDUCATION & CULTURAL RESOURCES		
3/20	HEARING		
3/23	TABLED IN COMMITTEE DIED IN COMMITTEE		

SB 371 INTRODUCED BY GROSFIELD

DEFINE "OUTSTANDING RESOURCE WATERS"

2/10	INTRODUCED		
2/10	FIRST READING		
2/10	REFERRED TO NATURAL RESOURCES		
2/11	FISCAL NOTE REQUESTED		
2/13	HEARING		
2/17	FISCAL NOTE RECEIVED		

2/17	FISCAL NOTE PRINTED		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/20	2ND READING PASSED	28	22
2/21	3RD READING PASSED	38	12
	TRANSMITTED TO HOUSE		
2/22	FIRST READING		
2/22	REFERRED TO NATURAL RESOURCES		
3/20	HEARING		
3/22	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/27	2ND READING CONCURRED AS AMENDED	61	37
3/29	3RD READING CONCURRED	63	37
	RETURNED TO SENATE WITH AMENDMENTS		
4/04	2ND READING AMENDMENTS CONCURRED	49	0
4/05	3RD READING AMENDMENTS CONCURRED	41	9
4/08	SIGNED BY PRESIDENT		
4/10	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 501		
	EFFECTIVE DATE: 10/01/95		

SB 372 INTRODUCED BY STANG

REQUIRE PAYMENT OF COMPENSATON TO STATE EMPLOYEES FOR TIME SPENT ANSWERING SUBPOENAS IN CIVIL ACTIONS

2/11	INTRODUCED		
2/11	FIRST READING		
2/11	REFERRED TO STATE ADMINISTRATION		
2/13	FISCAL NOTE REQUESTED		
2/16	FISCAL NOTE RECEIVED		
2/16	FISCAL NOTE PRINTED		
2/17	HEARING		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/21	2ND READING PASSED	50	0
2/22	3RD READING PASSED	41	9
	TRANSMITTED TO HOUSE		
2/27	FIRST READING		
2/27	REFERRED TO JUDICIARY		
3/09	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/25	2ND READING CONCURRED	80	15
3/27	3RD READING CONCURRED	92	6
	RETURNED TO SENATE WITH AMENDMENTS		
4/05	2ND READING AMENDMENTS CONCURRED	50	0
4/06	3RD READING AMENDMENTS CONCURRED	50	0
4/08	SIGNED BY PRESIDENT		
4/10	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 450		
	EFFECTIVE DATE: 07/01/95		

SB 373 INTRODUCED BY FOSTER, ET AL.

ESTABLISH CRITERIA FOR ISSUANCE OF BONDS FOR METAL MINE RECLAMATION ACTIVITIES

2/11	INTRODUCED		
2/11	FIRST READING		
2/11	REFERRED TO NATURAL RESOURCES		
2/13	FISCAL NOTE REQUESTED		

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 13, 1995, at 1:00 PM

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. William S. Crismore (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Jeff Weldon (D)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Theda Rossberg, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 330, SB 331, SB 346, SB 362, SB 371
Executive Action: SB 234

HEARING ON SB 346

Opening Statement by Sponsor:

SEN. GARY FORRESTER, SD 8, Billings, said SB 346 allows for a compromise position for cleanup of some waters that have been disputed for a number of years, and without SB 346 will probably continue to be in dispute.

Proponents' Testimony:

Steve Pilcher, Administrator Water Quality Division, Department of Health and Environmental Sciences, said the department has attempted to deal with the problem that they have been facing in

administering the Montana Water Quality Act. When Montana streams were classified in the 1960's, water quality information was very limited, and a number of streams were not classified at the time. A good example is the upper Blackfoot River near Lincoln where mining activities of the Mikehorse, Anaconda, and Paymaster Mines seriously impacted the quality of the Blackfoot River. SB 346 provides a mechanism to restore those waters that have suffered from past mining operations, to a better quality. **EXHIBIT 1**

Alan Joscelyn, Attorney, Helena, said he worked with DHES in helping to put SB 346 together. The bill would allow the department to change the standards to adopt rules establishing temporary water quality standards in Montana.

Florence Orr, Pony, representing the Northern Plains Resource Council, said they were in support of SB 346 as a vehicle to prevent further degradation of water quality in Montana. They have over 2,000 members who believe in good stewardship of their natural resources. The permittee must be responsible for the quality of water, but that has not been the case in Pony where the Chicago Mining Company left tailings that have contaminated the water.

Larry Brown, representing the Agriculture Preservation Association, said he agrees with the department that the there is a need for flexibility to reclassify the waters that do not support a designated use. He supports SB 346.

Jim Barrett, Cooke City, agrees that SB 346 represents a positive step towards dealing with problems that have been ongoing for 40-50 years. In Cooke City there is a large corporation, that resides in another country, that has a smaller subsidiary that is a permittee for a proposed mine there. But this permittee does not have many resources to carry out any kind of plan for clean-up. There needs to be some assurance that a clean-up plan would be carried out as a stipulation for a permit.

Opponents' Testimony:

Brian Kuehl, representating the Greater Yellowstone Coalition, which is a coalition of over 6,000 individual members and over 100 corporation and organizational members, said he was against SB 346 because the classification of a stream means that a stream is fishable and swimmable or can become fishable and swimmable. Subsection 3 states: "When the board adopts temporary standards, the goal is to improve water quality to the point at which all designated beneficial uses are supported." That is no reason for reclassifying a stream. If the stream is not meeting its uses, it should be cleaned-up. The water quality standards should not be lowered to establish temporary standards. There may be a need for a small temporary standard, but not as broad and widespread as the bill indicates.

Jim Jenson, Director Montana Environmental Information Center, said he was against SB 346 because it was not needed. In the upper Blackfoot River that has been significantly damaged over the years by historic mining activities, the water is being cleaned-up under a permit granted last year to Asarco who owns the mine. The permit has specific goals that are achievable to meet the water quality standards. He wondered why there would be a bill to reclassify that stream.

Debby Smith, Helena Attorney representing the Sierra Club, said the goal behind SB 346 is to provide temporary water quality standards that are more stringent on a parameter-by-parameter basis than existing water quality standards for a particular water body whose designated beneficial uses are not being met. Already in place under the Water Quality Act are rules and regulations for clean-up of streams. She requested that the committee table the bill. **EXHIBIT 2.**

Kenneth Knapp, Executive Director Montana River Action Network, said he represents 700 members in the state. He agrees with the opponents who testified that the bill is not needed. He said for nearly 15 years he made his living as an outdoor writer for over 200 magazines throughout the world, promoting Montana. He said water quality should be improved, not degraded. **EXHIBIT 3.**

Joe Gutkoski, President Madison/Gallatin Alliance, said he supported the concept of SB 346, but it is entirely too open-ended. The 20 year time limit is too long for clean-up.

<u>Questions From Committee Members and Responses</u>:

SEN. KEN MILLER said it seems that the DHES already has the applicable laws for what the bill intends to do, according to testimony by **Ms. Smith** and **Mr. Jensen.** **Mr. Pilcher** said he would agree with a portion of their testimony. He did not agree that the additional legislation is not needed. The bill legitimizes the process that was currently in place. Regardless of testimony, the upper Black Foot River and many others in the state do not meet the assigned water quality standards. There are stream segments that are in violation of the Water Quality Act and their standards. SB 346 would allow people to work toward compliance without being in violation of the Water Quality Act.

SEN. B. F. "CHRIS" CHRISTIAENS asked **Mr. Pilcher** if the streams were already over-classified, what is being done by the DHES for mitigation. **Mr. Pilcher** replied that they were working with the responsible parties to address known problems of historic degradation. The problem in the upper Black Foot River occurred over many years and was not just a single incident of the Mikehorse Mine. There are many streams where there is not a plan in place for clean-up. The upper Black River is a voluntary program undertaken by Asarco and the Anaconda Company. They are providing the funds for corrective actions, as well as for

department sponsored over-sight to ensure that activities are appropriate.

SEN. CHRISTIAENS asked if the department thought that SB 346 would down-grade Montana streams. **Mr. Pilcher** said the bill in no way down-grades water quality. The bill recognizes that some of those streams do not and have not met the standards that were established for their classification. The bill does not impair their ability to work toward the goal outlined in the Federal Clean Water Act.

SEN. TOM KEATING asked **Mr. Pilcher** if he would give him an example of what he meant by bringing the water up to standards. What is Asarco doing to help improve the quality of the water? **Mr. Pilcher** responded that the water does not meet the standards. The companies have developed and submitted to the department for approval a phased approach to restore the quality of water in the upper Black Foot River. A lagoon has been put in to provide treatment to improve the quality of water coming out of the adit. The next phase would be to take that discharge and apply it to a wetlands area to facilitate even further implementation of the clean-up. They can only do so much so fast for the clean-up.

SEN. KEATING asked if that was kind of a sedimentation and filter process. **Mr. Pilcher** answered that is correct, and the treatment is also being enhanced to try to reduce the heavy metals concentration. **SEN. KEATING** asked if the water quality there was affected by agriculture and timber run-off. **Mr. Pilcher** said there could be other industries contributing to the degradation, but the mining in the area far over-shadows other activities.

SEN. MACK COLE asked if there were a number of other rivers that would fall into that same category. **Abe Horpestad, Water Quality Division**, said they would prepare a list of the other rivers and streams for the committee. He said there were approximately 25 streams he was familiar with.

CHAIRMAN LORENTS GROSFIELD asked if on Page 2, Line 9 that says: "If rules are adopted regarding temporary standards,..." implies that they may not be adopted? **Mr. Pilcher** said it was their intent to adopt rules to implement the provisions in SB 346.

CHAIR. GROSFIELD said on Page 5, Lines 4 and 7 the bill says: "according to the plan's schedule or modifications to that schedule made by the board or department." He didn't see anywhere in the bill the provisions for the board or the department to make modifications. He asked how modifications would be made. **Mr. Pilcher** said the decisions and temporary standards would be made by the board. If there was a need to modify the schedule, the proposed application would have to be submitted to the board.

CHAIR. GROSFIELD asked **Claudia Massman, Attorney, Water Quality Division,** if it should be spelled-out in the bill how it would

work because the bill doesn't address modification. **Ms. Massman** said that probably should be spelled-out. They thought that during the 3 year review the department would review the plan and see if it needed to be revised.

CHAIR. GROSFIELD said supposing someone applies for a temporary water quality standard and after 5 years something happens and they take off. Maybe it would be 15 years before someone else would tackle it. Would they be able to start with 6 years or is it the intention that the 20 years have gone by and there is no further opportunity to fix that stream? **Mr. Pilcher** said they have not addressed that specific scenario, but he thought that if someone came in and wished to continue that plan they would be given an opportunity to do so. The elimination of temporary standards would not prohibit the department from seeking through its enforcement authority under the Water Quality Act, further implementation of the plan and further corrective measures by an identified responsible party. Just because they decided they didn't want to play ball anymore doesn't mean they would be relieved of their responsibility.

Closing by Sponsor:

SEN. FORRESTER said over the years he has seen all the damage that has been done to the streams. For the last 30-40 years there has never been anything done about that. The bill is an honest attempt to do something to correct those problems. For the first time, even some people of the environmental community are supporting something that would clean up water. That was the first time that a bill reflected the reality of the situation at hand. He said the bill would give them a chance that Cooke City and the Boulder area streams would be cleaned-up. The DHES did an excellent job in drafting the bill. It won't satisfy everyone, but it will benefit the people of Montana. He agreed that there was a need for some technical amendments regarding rule-making. The bill had been carefully drafted and the people of Montana will be able to see that the Legislature is really working on the problem.

HEARING ON SB 330

Opening Statement by Sponsor:

SEN. CHUCK SWYSGOOD, District No. 17, Dillon, said SB 330 revised the water quality nondegradation provisions of the Montana water quality laws, and corrects some of the problems with the nondegradation process. The current process is difficult for the DHES to manage. The definition of high quality waters needs to be narrowed down so that only the actual high quality waters would be subject to the nondegradation process. Montana has a number of streams that have low quality water, particularly those in eastern Montana. A large number of intermittent streams that only run when it storms or rains are currently classified as high quality water and they shouldn't be.

Proponents' Testimony:

John Fitzpatrick, Pegasus Gold Corporation, said the concept of nondegradation has been in the Montana Water Quality Act for over 20 years and only in the last 3 or 4 years has the DHES tried to enforce the provisions. The concept is that waters should not be allowed to change by the addition of pollutants. SB 330 deals with the definition of high quality water and the statutes require that a body of water meet only one out of 240 numeric parameters to be considered high quality water. That is a broad definition because there are already a number of streams that have deteriorated because of previous activities. In some cases they are low quality because of natural conditions, such as the groundwater in central and eastern Montana. The bill identifies truly high quality waters and other waters are exempt.

Doug Parker, Hydrologist, Crown Butte Mines, said he favors the legislation because the definition of high quality water needs to be changed. Most of the other states have been very careful in how they define high quality water and have more workable regulations than Montana. Another portion of the bill addresses that there needs to be a longer period of review. An industry cannot invest large amounts of capital and in a 3 year review have a nondegradation process overturned. There cannot be capital improvements and expense subject to withdrawal after a short period of time.

Don Peoples, Montana Technology Company of Butte, said the nondegradation standards in the bill identify the high quality waters and those that are not. There are some serious problems and SB 330 addresses that. He asked for the committee's favorable consideration.

Max Botts, Consultant Geologist with Hydrometrics, Helena, said he had worked with water quality for 5 years. The last 3 years there have been dramatic rule changes in Montana. The regulatory frame-work has become more complicated and more difficult. There are nondegradation rules, mixing zone rules, and surface water standards. In developing those rules the department did a good job in trying to interpret what they felt was the intent of the Legislature. However, the rules are conflicting and complex and are the most stringent in the United States. Few other states have ground-water standards. Essentially all waters in Montana have been included as high quality with very few exceptions.

{Tape: 1; Side: B}

Mr. Botts said he didn't think industries in Montana could pass the nondegradation rules as they exist. He supports SB 330.

John Bloomquist, Montana Stockgrowers Association, said there are 3 changes in the bill that are good: 1) the change in the definition of degradation because it is entirely too broad, 2) the change in the definition of high quality waterbecause it is

also too broad, and 3) applying the nondegradation policy where it should be applied to high quality waters. The bill provides those 3 changes that will provide a more workable and reasonable nondegradation policy for Montana.

Larry Brown, representing the Agricultural Preservation Association, said he agrees with **Mr. Botts and Mr. Bloomquist's** testimony. He supports the provisions in SB 330.

Mike Murphy, Montana Water Resources Association, said they support SB 330 because it provides a reasonable balance of the application of Montana's nondegradation issue. It provides a more positive approach for permitting.

Jack Lynch, Chief Executive, Butte Silverbow, said he agrees with those speaking in favor of the proposed changes to review definitions in terms of degradation.

The following proponents were not allowed enough time for their testimony:

Don Allen, representing the Montana Wood Products Association, supports SB 330.

John Youngberg, representing the Montana Farm Bureau Federation, supports the bill.

Bob Williams, representing the Montana Mining Association, would like to go on record as supporting SB 330.

Jim Mockler, Montana Coal Council, supports SB 330.

Candace Torgerson, Montana Cattlewomen's Association, said they support SB 330.

Maureen Schwinden supports SB 330.

Opponents' Testimony:

Hope Stevens, Marysville, said the bill is weakening the nondegradation standard for water. Both SB 330 and SB 331 will only respond to the wishes of a few. Most businesses decide to locate in Montana because of its natural beauty. Fishermen come here for the excellent fishing that Montana provides. Movie companies also come here for the natural beauty of the state. However, the movie "A River Runs Through It" could not be filmed on the Blackfoot River because the water was so polluted. Therefore, they filmed some of the scenes on the Gallatin River. That river is now being polluted by sewage from the Big Sky Resort. The Micron Company proposing to come into Butte would also want pure water. If everyone would practice responsibility and consideration, there would be no need for the bill.

Steve Pilcher, Administrator Water Quality Division, DHES, said he was in opposition to SB 330. He was surprised that some amendments had not been offered to the bill. Last session nondegradation was discussed at length in SB 401. The concept of nondegradation is a simple idea, but it is extremely difficult and complex to implement. The bill represents excessive reaction to the department's attempt to implement SB 401. In its current form the bill would seriously weaken the water quality program. Section 1, changes the definition of degradation which would require a complete revision of the water quality rules. The definition of high quality waters would restrict the application of nondegradation to only a small percentage of the waters in the western third of the state. The proposed change in the definition of interested parties, restricts citizen involvement in the process.

Mr. Pilcher said that **Mr. Joscelyn** indicated that some amendments would be offered. He said they were comfortable with the amendments and would change their position on the bill, but they were testifying on the bill as introduced. Section 2 of the bill is the one of most concern, in that it would establish water quality standards based on maximum contaminate levels and basically allow significant pollution to occur. If the bill passes as introduced, the Environmental Protection Agency will adopt their current standards in lieu of the proposal in the bill. The people of Montana would be facing two different water quality standards: ony under the Water Quality Act, and another under the Federal Clean Water Act. Also, the EPA would withdraw their delegation of permitting authority and there would be two permits required for any waste discharge. Currently those responsibilities can be combined.

Paul Hawks, Rancher, Sweetgrass County, asked whetther "directly affected" means on site or something next door. He said he was also a member of the Montana Stockgrowers and the Northern Plains Resource Council and they seem to be the only ones interested in water quality. Two years ago there was a problem and under SB 401 those problems were taken care of. He said he was offended that they didn't know about the amendments or what they were. He said the department is finally getting its act together, and we should see if it works.

Jim Jensen, Montana Environmental Information Center, said the bill would limit high quality water, and asked the sponsor what waters he is referring to. The waters that come out of the national parks or wilderness areas are high quality water and the rest of the waters can go down the drain in the bill. There are no federal laws that protect groundwater. The Legislature decided to protect the groundwater in Montana. The only protection that Montana has is the nondegradation Water Quality Act and this bill is throwing that away.

Debby Smith, Helena Attorney representing the Sierra Club, said they oppose the bill for all the reasons that have already been

stated. Nondegradation of the water is the law, and the Legislature cannot exempt most of the waters in the state from that protection.

Richard Parks, Past Chairman, Northern Plains Resource Council, said his interpretation of the bill was that only those people that have a direct property interest have an opportunity to participate in the process. He said he was a fisherman outfitter and high quality waters in Montana are his stock in trade even though he owns none of them. The NPRC opposes the bill and the amendments.

Paul Roos, Fly Fishing Outfitter, Helena, said he opposes SB 330 because it attempts to reduce the ability of Montanans and state agencies to protect against degradation of water quality.

Florence Orr, Member of the Concerned Citizens of Pony, said that any bill that would allow degradation of water should be tabled.

Brian Kuehl, Greater Yellowstone Coalition, said not to believe the rhetoric that nondegradation is shutting down industry. Clean water is important to industry, and there is sufficient flexibility in the nondegradation rules. The Crown Butte Mine near Cooke City has applied for a nonsignificant waiver under the nondegradation rules, because they believe that mine impacts to water quality will be nonsignificant. The rules should not be weakened.

Ms. Garland, Lincoln, said she lives near a new gold mine and it is important to keep the water in Montana at the highest quality possible.

Bruce Farling, Montana Trout Unlimited, said they oppose SB 330, and also there is no fiscal note with the bill. Because of the reclassification that will be required of all those streams it would require a lot of staff from the DHES. The streams that will come under SB 330 would be the Blackfoot River, Madison, Bitterroot, Rock Creek, Flathead Lake and others. **EXHIBIT 4.**

Jim Barrett, representing the Beartooth Alliance, Cooke City, said they oppose the bill for the same reasons stated earlier. He said ask yourselves the question: "is this progress or regress?"

{Comments: the following opponents did not have time to testimony because of the lack of time.}

Allan Rollo, Montana Wildlife Federation. EXHIBIT 5.

Kenneth Knapp, Executive Director, Montana River Action Network. EXHIBIT 6.

Dich Golder, Forsyth. EXHIBIT 7.

Donald Kern, Canyon Coal, Helena.

Robert Cunningham, Executive Director, Fishing Outfitters Association of Montana.

Jon Krutar, Rancher, Ovando.

Letter from the Missoula County Health Department. EXHIBIT 8.

Joe Gutkoski, President Madison Gallatin Alliance.

Questions From Committee Members and Responses:

SEN. FOSTER said on Pages 4 and 5 of the bill there were Water Quality Criteria. He asked **Mr. Pilcher** if he could provide the source of that table. He answered that the table included a combination of information from different sources. The column under Human Health represents maximum contaminant levels that were from the Federal Safe Drinking Act. The other numbers were from the Environmental Protection Agency that were listed under Aquatic Life: Acute and Chronic.

SEN. WELDON asked **SEN. SWYSGOOD** when the Board of Health adopted the nondegradation rules. He replied that it was sometime last summer. **SEN. WELDON** asked how many companies had to go through the permitting process under the new rules. **SEN. SWYSGOOD** said he wasn't sure, that would have to be answered by the DHES. **Mr. Pilcher** said no one has completed that process under the rules adopted under SB 401. **SEN. WELDON** said since no one has had to go through the rules process yet, how would anyone know if the new rule system is unnecessarily cumbersome. **SEN. SWYSGOOD** said that given the definition of "high quality water", it makes it impossible for anyone to conform to the standards. **SEN. WELDON** said if no one has attempted, how does anyone know it is impossible. **SEN. SWYSGOOD** said he assumed that agriculture, industry and others have a deep concern over the rules that it would be impossible to go through that process because of the strict standards.

SEN. BROOKE asked **SEN. SWYSGOOD** if he had amendments to the bill. **SEN. SWYSGOOD** said there would be some amendments offered on the bill. **SEN. BROOKE** asked if there would be another hearing on SB 330, because she understood the amendments change the bill significantly. **CHAIR. GROSFIELD** said that there are often substantive amendments offered to any number of bills that are dealt with in Executive Session. Until the amendments are dealt with, another hearing would not be considered.

SEN. BROOKE said there has been a lot of testimony about degradation of waters, and it seems that they cannot be brought up to a higher quality or standard. However, the Clark Fork River at Missoula has been brought up to a higher standard. She

asked **Mr. Horpestad** if he would comment on that. He said that many of the rivers have been brought up to a higher standard. The Clark Fork and the Yellowstone have improved significantly.

SEN. BROOKE asked if he thought the bill as introduced would go back to the days that would not allow the department to significantly improve waters. **Mr. Horpestad** said the bill as introduced would have most of the staff of the EPA working on it.

Closing by Sponsor:

SEN. SWYSGOOD said amendments would be offered to the bill, but they were arrived at by the department after the bill was introduced. He said he wasn't sure the amendments would satisfy some of the opponents, but he would hope some of the concerns would be addressed.

HEARING ON SB 331

{Tape: 2; Side: A}

Opening Statement by Sponsor:

SEN. TOM BECK, District No. 28, Deer Lodge, said SB 331 clarifies the Montana Water Quality Act. The purpose of the bill is to clearly define high quality waters, and make the nondegradation process apply to those waters. He said instead of explaining the bill step by step, he will let the experts testify on what they are trying to do with water quality. He said he was not trying to degrade water, but was trying to make drinking water feasible in all areas of the state, from a mine or anything else. He said he had some amendments that were drafted that the department and industry had come to a compromise on.

Proponents' Testimony:

Sandy Stash, Manager of ARCO, said she would like to talk about some of the technical issues that the bill is proposing. The proposal is consistent with EPA policy and what is occurring in other states. Regarding the metals criteria and whether metals should be measured by the dissolved method or the total recoverable method, she referred to a memo from the Office of Water Policy and Technical Guidance of the EPA. A quote from that memo says: "we strongly encourage the application of the Water Effect Ratio (WER) across a watershed or waterbody as opposed to application on a discharger by discharger basis, as a technically sound and an efficient use of resources." **EXHIBIT 9.**

They found that the dissolved metals were the ones that get into the fish, etc., not the total recoverable. Montana currently uses the total recoverable method and the bill suggests that they go to the dissolved metals. The EPA changed their guidance to states and to date 18 states have made that change. **Ms. Stash**

reviewed a chart regarding the clean-up in Silver Bow Creek. **EXHIBIT 10.**

The bill suggests what the numbers should be, and how they should be measured and how decisions should be made.

Alan Joscelyn, Golden Sunlight Mine, said the reason the bill was proposed was a need for definitiveness, consistency, and predictability. There are some significant problems in the Water Quality Act with compliance. He said there is an agreement that some of the points raised by the DHES will be addressed in the amendments. With his experience over the last 5 years he said SB 331 was a good bill.

John Bloomquist, Montana Stock Growers Association said they support SB 331. He said the definition of degradation and state waters was addressed in the bill. It recognizes that certain water bodies like ponds, lagoons, or water that has been used up by the land which are not state waters, and would not be subject to the pollution and other definitions that are in the Act. In Section 7, regarding intermittent streams, it doesn't make sense to make those streams that do not support aquatic life subject to water quality standards.

Larry Brown, Morrison/Maierle Environmental Corporation said he wanted to comment on the aspect of risk as it applies to the standards. The bill will give an opportunity for risk levels to be evaluated from a technical perspective.

Don Peoples, Montana Technology Company of Butte, said that he was in favor of SB 331. The bill is a common sense approach to dealing with water quality standards.

Mr. Leavitt, member of the Tri State Information Council, said he supports the changes that SB 331 is trying to make with the definitions of water quality.

Doug Parker, Crown Butte Mines, said that the Water Quality Act was an unworkable law and the changes needed to be made. He reviewed the arsenic changes in water that is proposed in SB 331. **EXHIBIT 11.**

He said he realized the DHES had concerns about the standards that are in the proposed bill, but they will be addressed in the pending amendments and those changes should satisfy the EPA and the department's concerns. The proposed change concerning intermittent streams that is in the bill is also important. He supports SB 331.

Collin Bangs, Montana Association of Realtors, said they have met with the health department and negotiated a change that would allow the use of septic tanks and drain fields in 80%-90% in areas that previously could not. The bill gives the state of

Montana a lot better protection of their water than what they had 2 years ago.

John Youngberg, representing the Montana Farm Bureau Federation, said the questions that would be asked would be about the impact on human health with the standards. He said they have been told that they were the standards from the EPA. SB 331 will not harm human health or aquatic life. He urges the committee's support of the bill.

Jack Lynch, Chief Executive of Butte Silverbow, said with the issue of standards come the compliance and then comes the issue of cost. Butte Silverbow, in an effort to comply with some of the standards, has spent millions of dollars on sewer and landfill. The proposals of SB 331 are reasonable and attainable. He urged the passage of SB 331.

{Comments: the following proponents did not have time to testify do to the lack of time.}

Mike Murphy, representing the Montana Water Resources Association, supports SB 331.

Bob Williams, Montana Mining Association, supports SB 331.

Don Allen, Montana Wood Products Association, supports SB 331.

Candace Torgerson, Montana Cattlewomens Association, supports SB 331.

THE FOLLOWING WRITTEN TESTIMONY WAS RECEIVED IN SUPPORT OF SB 331:
Pam Willett, Broker/Owner ERA Property Store. EXHIBIT 12.

David Bailey, Kila, Montana. EXHIBIT 13.

Opponents' Testimony:

Hope Stevens, Marysville, asked the committee members to please think carefully about who the people were that were supporting SB 331. They were nearly all large powerful industries. There are a lot of small businesses that employ people that are here to stay because of the high quality of water. Please consider their needs and those of who have children and grandchildren. She said she opposes the bill.

Donald Kern, representing the Citizens' Coalition of Pony, said SB 331 would preclude state water quality standards which were more stringent than federal regulations. SB 331 is a permit to pollute and is a slap in the face to any Montanan who appreciates the clean water supplies. The Berkeley Pit and numerous others remind us of what happens when regulations are not in place. The bill also lowers health standards for arsenic, mercury, copper,

and other heavy metals from mining waste. He said the bill is an attempt to subsidize the mining industries at the expense of the water quality in the streams. He suggested they go elsewhere to conduct their dirty business.

Glenn Marx, Policy Director, Governor Mark Racicot, said the state stands as an opponent to SB 331 as written, but if the department's amendments were adopted, the state would support SB 331. **EXHIBIT 15.**

Steve Pilcher, Administrator Water Quality Division, DHES, said they rise in opposition to SB 331 in its current form. He recognized and extended his appreciation to the sponsor and the industry representatives. He pointed out that DHES's standards were based on federal guidelines and were approved by the federal Environmental Protection Agency. **Mr. Pilcher** asked for the support of the amendments that will be offered to the bill. **(For further DHES comments to the bill, see EXHIBIT 16.)**

Mr. Horpestad gave a visual demonstration of dissolved vs. total recoverable methods for metal parameters. The copper that is settling to the bottom will be available for fish and bugs to eat, and be deposited on stream banks and eventually into the streams in response to thunder storms.

Nick Golder, Rancher, Forsyth, opposes SB 331.

{Comments: Due to so much noise it was difficult to hear Mr. Golder's testimony and was not clear on the tape}

Chris Tweeten, Montana Department of Justice, said they manage the Natural Resource Damage Program that was responsible for litigating the lawsuit against ARCO. He said they were seeing an excess of $600 million in damages in the Clark Fork Valley. If SB 331 is enacted as introduced, it will undercut the scientific basis for the lawsuit that they worked on for 5 years and is now ready to go to trial within 2 years. **Mr. Tweeten** said the amendments that will be offered will address many of their concerns.

Richard Parks, Northern Plains Resource Council, said they rise in opposition to SB 331. The state may resolve their problems, but not necessarily resolve the public's problems. He said they went through a 2 year process to establish the present rules. There has been a lot of discussion that those rules were unworkable, but there were no facts supporting that. It is disrespectful for the time and the amount of money that had been spent on that process and the people involved in the Board of Health rulemaking process to require them to start all over again.

Jim Jensen, Montana Environmental Information Center, said Page 5, Line 7 the definition "industrial waste" is fine, but the change adds: "The term does not mean materials incorporated or

placed into a structure, facility, or location authorized in a permit issued by a state or federal agency." Suppose the Department of State Lands issued a permit for a mine with a tailings pond. They all leak pollutants but they would not have to get a permit from the health department. The bill says it is legal to place materials in a place where they may cause pollution to the water. He urged the committee to table SB 331.

Becky Garland, Lincoln, said SB 331 is bad for Montanans and opposes the bill.

{Comments: the following opponents did not get to testify due to the shortage of time.}

Paul Roos, Fishing Outfitters Association, opposed SB 331.

Joe Gatkoski, Madison Gallatin Alliance composed of 250 members that are opposed to the bill. Please table it.

Debby Smith, Helena Attorney, Sierra Club, opposes the bill.

Brian Kuehl, Great Yellowstone Coalition, opposes the bill and the amendments.

Jim Barrett, Cooke City, Beartooth Alliance, opposes the bill.

Kenneth Knapp, Executive Director, River Action Network, opposes the bill as presently written and any amendments.

Paul Hawks, opposes SB 331.

Laurie Gano, opposes SB 331.

Dave Gano, Melville, Montana. EXHIBIT 14.

{Comments: the meeting adjourned at 3:00 pm and reconvened upon adjournment of the Senate at 6:30 PM.}

{Tape: 2; Side: B}

Questions From Committee Members and Responses:

SEN. FOSTER asked **Mr. Pilcher** if their was a law suit between Arco and the State of Montana, and if it had any effect on SB 331. **Mr. Pilcher** said the lawsuit was not a driving force in their review of SB 331. The concern is whether or not the legislation would have some effect on the departments. **SEN. FOSTER** asked if the department would favor the bill, would it cause harm to the law suit. **Mr. Pilcher** said no, the bill or the amendments would not have an adverse impact on the law suit.

SEN. CHRISTIAENS asked **Mr. Bangs** if he would comment about the sewage disposal issue. **Mr. Bangs** said the regulations that were passed last session have resulted in outlying septic tanks that had been used for years, required advance treatment systems. He said it cost between five thousand ($5,000) and ten thousand dollars ($10,000) more to put in the advance treatment systems. Missoula County does not approve of the advanced treatment system. The problem is the state would require that system and the local counties do not approve the advanced treatment system. There is a huge problem with affordable housing in Montana. The cost of housing in the Missoula area has gone up by 90% in the last 10 years. Therefore, they have to make sure that another five or ten thousand dollars ($5,000 or $10,000) is not added to the cost of the individual houses. **Mr. Bangs** said they feel that they could go back to the regular septic tanks and still protect the water.

SEN. WELDON said if groundwater is contaminated to the standard listed in the bill, and the water is used for drinking water, it says they would be required to shut down the water supply. He asked **Mr. Pilcher** if he would respond to that. **Mr. Pilcher** said that the question is should we allow groundwater to reach 10 milligrams per liter, which would be the maximum nitrate level allowable for public health concerns. The DHES has to review subdivisions concerning the sewage and the water. If the department allowed them to degrade the water to the maximum contaminate level, then that subdivision could not be approved because the groundwater that was used for domestic use would be at the maximum level.

CHAIR. GROSFIELD asked **Mr. Joscelyn** if he could give the committee members some idea of what the amendments would be about. **Mr. Joscelyn** said that after the bill was drafted there was mutual interests addressed by the DHES and industry that involved several meetings, and some amendments were drafted. There were 45 amendments turned into the EQC for formal drafting. Those amendments were points that came up in discussions about the bill. About 99% of the points addressed were agreed upon. They still disagreed on how parameters should be measured and a couple of other areas.

CHAIR. GROSFIELD said **Mr. Tweeten** testified on the amendments from the Attorney General's office on the Natural Resource Damage Program. He asked **Mr. Collins** if he would respond to that. **Rob Collins, Chief Counsel, Natural Resource Damage Program,** said initially they agreed to oppose the bill, but when industry agreed to make some amendments, some of their opposition was addressed. There was still some concern with the site specific criteria and the method of measurement. He said there would be some additional amendments proposed by the DHES. With the amendments that have been proposed and the DHES proposed amendments, the Department of Justice would support the bill.

SEN. BROOKE said Page 12, Lines 9-11 says: "An application is considered complete unless the applicant is notified of a deficiency within the appropriate review period." She asked **Mr. Pilcher** if he thought there would be difficulty in notifying someone within the review period with the staff that they have. He answered that the section she referred to causes considerable problems from the resource standpoint with respect to being able to complete a review within 30 days. The application for some of the projects is lengthy; for example, the 7Up Pete project, it consisted of 27 volumes. To be able to complete a one-time review of an application like that within 30 days was impossible. **SEN. BROOKE** said she had a lot of questions about the bill, but if the amendments address those questions, they would be moot. She asked if Section 13 was amended out of the bill. **Mr. Pilcher** replied that there were amendments that addressed that concern. The initial time-frame will be changed with the amendments.

SEN. BROOKE said she had some concern about the Milltown Dam near Missoula. Discussion has gone on for some time now concerning the toxic waste there. She asked **Mr. Pilcher** what the bill would do to address that situation. He responded that in the bill as introduced, he would have some concerns about the water quality there. But with the amendments he did not think the review on that situation would change from what is already in place. The superfund process has to consider alternatives to the remediation plan, but does not believe SB 331 would have anything to do with that decision.

SEN. KEATING said the matter of "dissolved" and "totally recoverable" has come up several times. He asked **Ms. Stash** if she could give a scientific explanation why totally recoverable may not be necessary. She said the demonstration **Mr. Horpestad** was the best example of total suspended solids. The solid form was not harmful to fish. She read a quote from the Water Policy and Technical Guidance from the United States Environmental Protection Agency, dated October 1993. See **EXHIBIT 9. Page 2.** That quote says: "...This conclusion regarding metal bioavailability is supported by a majority of the scientific community within and outside the agency. One reason is that a primary mechanism for water column toxicity is absorption at the gill surface which requires metals to be in the dissolved form." Copper is a metal that is immediately dissolved and is bioavailable to the fish and should be protected against. There was some talk about costs of total recoverable vs. dissolved. The difference in the cost of testing those would be about $12.00 per sample to measure what the correct way would be.

Ms. Stash said there was reference made regarding a law suit from an individual company. She questioned whether it was good policy to set policy for an entire state based on a single pending lawsuit. **SEN. KEATING** said the example she referred to was with copper; that the fish could not take them in through their gils because of the size of the chunks.

SEN. KEATING asked **Ms. Stash** if that applied to all metals. She answered yes it does. She said what makes metals problematic is when they go from metals to a metals salt.

SEN. KEATING said 10 milligrams of nitrate per liter was considered safe until SB 401 was enacted, and was safe for a fetus. Then someone says they would compromise and say 5 milligrams per liter. Why did the department go to 2.5 milligrams per liter and then someone says they would be happy with 5. **Mr. Pilcher** responded that 10 was a maximum contaminate level and was designed to protect the people consuming that water. He said 10 would be enough of a threat to infants that the water must be protected. It also depends upon the source of the nitrates and other factors. **Mr. Pilcher** said one level is based on public health and the other is on nondegradation of water.

SEN. KEATING said SB 401 dealt with nondegradation and mixing zones. Nothing was ever said about septic tanks or subdivisions. He said he knew that they were not supposed to degrade the water and public health is supposed to be protected. However, they also have to provide for the public to be able to live some place. When nondegradation levels are unachievable or so expensive, the department has actually made rules against the public. Somewhere there has to be a happy medium for nondegradation, the public, and the protection of public health. He said if he had a septic tank and drain field on his land, it should be his prerogative if he wants to degrade the water regardless of the law. He asked **Mr. Pilcher** why there wasn't a happy medium that serves all purposes. He replied that when SB 401 was enacted, he could recall many of the same statements that it was a mining industry bill, but **Dan Frazer**, who was then Chief of the Water Quality Bureau, made it clear that nondegradation could apply to a lot of activities not just mining. He said **SEN. KEATING** was right that they had to achieve a balance. The department made enough changes to allow continued growth in the State of Montana. Many subdivisions were reviewed and approved with on-site drain fields, so they were not being shut down completely. In areas where the level of nitrates were moving up toward public health standard, the department has asked for advanced treatment. Many subdivisions have been approved with the advanced treatment systems installed, and were working fairly well. The department will revisit that to make sure that they were being reasonable.

SEN. CHRISTIAENS said if there are 45 amendments to the bill, he didn't feel comfortable asking questions, not knowing what the amendments would do to the bill.

CHAIR. GROSFIELD said he had been informed that the amendments would be delivered to the committee by Thursday.

Closing by Sponsor:

SEN. BECK said in the demonstration, the committee members saw the difference between the dissolved metals and recoverable. He said the same metals are in the solid stone as what was dissolved. He said he left it up to the DHES and industry to work out the amendments. There are two amendments that they were not yet in agreement on. He said as **Mr. Marx** pointed out, one-part per billion for carcinogenic standards was pretty severe for industry to try to comply with. Industry wanted to go to one-part per ten-thousand and arsenic would be one in one-thousand. **SEN. BECK** said he would have to talk to the people that drafted the bill before he would make a commitment on that. There has to be some common sense in the law and where does the parameter end regarding drinking water. He said in the beginning he had 10 milligrams of nitrate per liter in the bill, and the people from the Helena Valley asked very strongly for an amendment. They were putting in above ground septic systems that were costing up to ten thousand dollars ($10,000) as opposed to about twenty-five hundred dollars ($2,500) for a normal septic system. If the 10 milligram per liter standard had been in there, they could have met the standard. There have been a lot of amendments and compromise on the bill, and industry and the department seem to be working out the problems. **SEN. BECK** would appreciate the committee giving serious consideration to the amendments to the bill.

{Tape: 3; Side: A; Comments: there was so much background noise it was nearly impossible to hear the testimony or the tape}

HEARING ON SB 362

Opening Statement by Sponsor:

SEN. LARRY TVEIT, District No. 50, Fairview, said SB 362 is an act exempting certain activities from groundwater permit requirements. The rules adopted by the Board of Health for administration of the Montana Water Quality Act exempt some activities from groundwater requirements. A recent legislative audit performance review pointed out that the statutory authority for agencies other than DHES, gave them some jurisdiction over groundwater protection and was not clear. The report recommended clarifying in statute the authority of DHES to grant exemptions by referral to other permitting agencies for groundwater protection. In the alternative, the report recommended eliminating the exemptions that created the double permitting process.

Proponents' Testimony:

Gail Abercrombie, Executive Director, Montana Petroleum Association, said she attended meeting reviewing the audit of the

Water Quality Division and in the review they discussed the permitting requirements that were included in the rules. The report said there was not statutory authority to give the groundwater protection program to another agency. The report said either seek legislative clarification or eliminate the exclusions currently outlined in the rules. The DHES originally decided to concur with the elimination of the exclusions and were working on modifications to eliminate those exclusions. But the elimination of those exclusions will result in a significant number of additional activities requiring permits. Some of the facilities excluded from permitting requirements were hard rock mining operations, some oil and gas operations, and others. The result will be a lot more permitting requirements.

Ms. Abercrombie said in December some of the water quality representatives came to Billings and met with some of the industry people. They discussed groundwater quality permit rule-making by the department. Industry felt that the department had selected the wrong alternative to correct the legislative auditor's concerns. There was a question as to whether or not both exploration and production would need separate permits. The water quality representative said he didn't think so, but there were no clear assurances. There was no objection to the $50 permit fee, but there were producers that did object to the other proposed increases. For example, for the groundwater protection permit with the Water Quality Division, there will be an additional permitting fee of $250. The staff of the Board of Oil and Gas Conservation have done a good job of enforcing the environmental rules. She encouraged passage of SB 362.

Dennis Iverson, representing the Northern Montana Oil and Gas Association, said they support SB 362. He said the elimination of the exclusions of the permit process would cause extreme hardships to the regulated public and also the DHES.

John Youngberg, representing the Montana Farm Bureau Federation, said they support the bill because it codifies that which is already in the rules. It doesn't seem feasible to take something that is permitted in one area and turn it over to another area.

John Fitzpatrick, Pegasus Gold Corporation, said they support SB 362 as it was introduced. Metal mines are not exempt from groundwater permitting because they are required to get a formal permit from the DHES, and groundwater is taken into consideration when permits are issued by the Department of State Lands. Many years ago the DHES delegated that responsibility to the DSL. He said they were concerned that if that exemption was lost they may have to retroactively permit facilities that have been operating for many years. That exemption works very well and should be continued.

Larry Brown, representing the Agricultural Preservation Association, said the legislation is necessary because it

tightens up the issues that involve agriculture in regard to groundwater and storm permitting. On Page 2, Lines 8-9 are specific references to agriculture irrigation and storm water disposal.

Mike Murphy, representing the Montana Water Resources Association, said they wish to go on record to support SB 362.

John Bloomquist, representing the Montana Stockgrowers Association, said they support the legislation.

Steve Pilcher, Administrator, Water Quality Division, DHES, said they support SB 362. There were comments by some that testified about some activities exempted from permitting. In 1982 when the decision was made to exempt some activities, it was made because they didn't have the resources to do the job that needed to be done and they recognized that other agencies had similar permitting reviews. They are still not in a position to do all that permitting. SB 362 will institutionalize the practice of agencies other than the DHES permitting discharges to state waters. Currently DHES charges fees for processing and reviews of permitting. If another agency does that review they may not have access to that funding source. Other agencies may not have the statutory authority and the technical expertise necessary to provide consistent statewide control of water polluting activities as required under the Montana Water Quality Act. SB 362 would give them an opportunity to live up to that expectation. There is a concern that the bill needs to amend another section of the Montana Water Quality Act, and that is 75-5-605 which provides that it is unlawful to construct or operate a disposal system that discharges to any state waters without a permit from the DHES. He said that needs to be addressed.

Mr. Pilcher said the department supports the bill, but the following exclusions that are listed in the bill should be deleted in order to allow the department to require permits when they feel the activity warrants control: 1) discharges under the underground injection control program with the exception of Class 2 wells; they would be willing to allow the Oil and Gas Commission to permit oil and gas wells; 2) subsurface disposal systems reviewed by the department under Title 50, Chapters 50 through 52; 3) existing treatments works reviewed and approved by the department prior to October 29, 1982; 4) public water supply, distribution, or treatment facilities approved by the department pursuant to Title 75, Chapter 6; and 5) provisions of the Montana Major Facility Siting Act, Title 75, Chapter 20. All of the other permit exemptions are satisfactory to them.

Russ Ritter, representing the Montana Resources, Butte, said they support SB 362 for the reasons previously stated.

Opponents' Testimony:

Jim Jenson, Executive Director of the Montana Environmental Information Center, said the Legislative Auditor analyzed the Water Quality Bureau and the Hard Rock Bureau. They discovered that the Hard Rock Bureau in the DSL fails to adequately and properly enforce water quality under the surface and groundwater requirements imposed under their permitting authority. An example is the Zortman, Landusky Mine that is owned by Pegasus, where the water quality was so bad that the Water Quality Bureau of the DHES had to bring suit. Aside from the fact the Water Quality Division is the proper authority to protect water, they do not have sufficient funds to comply with the recommendations of the audit. The Legislature has eliminated the Governor's request for additional staff to comply with the directives of the audit. The DSL requested from the same committee additional staff and that did not happen either. The DSL doesn't have enough staff to do that work. The committee should realize that the bill comes with a price tag and that should be considered. He urged the committee to leave the Metal Mine Reclamation Act authority with the DHES because of of DSL's inability to protect state waters, and give DHES the resources to do the job.

Richard Parks, representing the Fishermen Outfitters and the Northern Plains Resource Council, said they appear in opposition to the bill. The bill does not relieve permittees from complying with the Water Quality Act. It removes the Water Quality Division from the permitting process. A permittee should be able to tell how to comply with the Water Quality Act. How can a permittee be sure that he is not being set up for failure because he doesn't have the relevant information in order to comply with the Act. The permitting process belongs with the Water Quality Division. He said it is a bad bill that should be killed.

Joe Gutkoski, President, Madison Gallatin Alliance, said they have a pollution site in Bozeman called the Bozeman Solvent Site. The pollution comes from oil and gas stations, auto repair agencies, auto dealerships, and dry cleaning businesses. They have polluted the wells extending north including some wells in trailer courts. The plume is still running down the hill and a voluntary committee is looking into that and the state has done a lot of work for them. If the bill passes that will be the last of the state involvement.

Brian Kuehl, representing the Greater Yellowstone Coalition, said he wondered if they were really talking about transferring groundwater control in the Water Quality Division to the Department of State Lands or other departments. He said the issue is about whether or not they want to protect our water quality from activities such as major mines. The Hard Rock Bureau was not enforcing water quality laws and they don't have the expertise. Is the mining industry arguing for the bill because they can pollute more under the bill? Do the constituents want to worry about what is coming up in their

wells, and do they want mining exempt from groundwater control? If the committee approves of that then the committee should pass the bill. But Montanans do not want polluted water and the bill should be rejected.

Alan Rollo, representing the Montana Wildlife Federation, said the state should be looking at prevention instead of costly clean-up in several areas that were exempted in the bill. There is more and more groundwater pollution where people were required to boil their drinking water. The bill would increase the contamination of water. He requested that the committee table SB 362.

Kenneth Knapp, representing the Montana River Action Network, said about a month ago he attended a meeting in Butte on mine permitting. There were 150 people present representing the mining industry. One of them shared with them that the mining permitting process has become so complex that it is not cost effective anymore. The Hard Rock Mining people said there were only two things that could be done: change the rules or take it out of the Unites States where rules don't apply. There needs to be a role model for other developing countries in the world. He asked the committee to table the bill.

Jim Barrett, Cooke City, said he has lived in Montana for 22 years and watched a level of growth occur in the state. He said he lived in Detroit, Michigan on the edge of town where there were cows mooing. Today, the edge of town cannot be found. One day we will be sorry that we did not take the steps necessary to make sure that does not happen here. He recommends maintaining the ability for the department to require permits for any kind of water quality degradation. He opposes SB 362.

Paul Roos, Helena, said he didn't understand the logic in telling the DHES that they were to be concerned about the surface water but not the groundwater. Every winter just before the Blackfoot River reaches Lincoln it goes dry. Below Lincoln, within a quarter of a mile it is flowing again. The proposed 7 Up Pete Joint Venture is about 7 miles above Lincoln. At the headwaters of the Blackfoot and the Landers Fork they are proposing a pit 1300 feet down which is approximately 1,000 feet below the level of the river and the Water Quality Division has nothing to say about what might happen to the groundwater. That doesn't make sense and he opposes the bill.

<u>Questions From Committee Members and Responses</u>:

SEN. WELDON said Page 2, Line 14 says: "existing treatment works reviewed and approved by the department prior to October 29, 1982..." He asked what was so special about that date. **Mr. Pilcher** said that was the date on which the original groundwater rules were promulgated by the DHES.

SEN. KEATING asked **Mr. Kuehl** if he understood that all the things that the DHES is not going to do under the bill, they have not been doing before. **Mr. Kuehl** said he wasn't speaking on behalf of all the opponents because they represent a lot of different interests. The way he understood it, there was a water quality audit that said the Water Quality Division was not enforcing the law. They should be regulating and protecting groundwater, but they have been exempting certain activities such as mines. The audit says they should go back to how it was meant to be and eliminate the exemptions. He said that would clarify the responsibilities of the department.

SEN. KEATING asked **Ms. Abercrombie** if the legislative auditor said that the department was not doing their duties. He said he heard her say that the exempted permits were obtained in other departments, so the DHES said there is no need for duplication of permitting. He asked if there was anything in the audit that said that the department was not doing what it was supposed to do regarding protecting the water quality of the state. **Ms. Abercrombie** responded that it was a very broad audit. The section **SEN. KEATING** was talking about was merely a procedural issue. The audit only pointed out that there seemed to be enforcement problems.

SEN. CRISMORE said that **Mr. Jensen** made reference to a mine that had problems and a suit was filed by the DHES because things hadn't been done properly. He asked **Mr. Fitzpatrick** to respond. **Mr. Fitzpatrick** said **Mr. Jensen** was right that the DHES had filed suit against the Zortman/Landusky Mine because of allegations of water quality violations. That suit has not been adjudicated and they have not been convicted of any wrong-doing. He said **Mr. Jensen** also indicated that the DSL was not doing its job and he emphatically disagreed with that. It was the DSL in conjunction with the BLM who made the first effort to have a new reclamation plan developed to correct the problems. The DHES was supposed to participate in that process, but they didn't. The DSL has taken the lead in Zortman/Landusky to correct water quality problems. The DHES has basically been absent from the process except for their law suit.

CHAIR. GROSFIELD said the bill is almost verbatim with the rules that were in the rule book. There were two different alternatives suggested in the audit. Either specifically provide for the exclusions since they were not currently provided for in the statutes, or if the legislature does not authorize them in statute, the exclusions in the rules should be repealed. Those were the audit recommendations. This bill essentially codifies those rules into the statutes. He said that the department would like to exclude from the bill on page 2, part of subsection (a), (i), and all of currently (j), (k), and (n). He said he had asked the department about the number of permits that may be involved if the exclusions were not provided for. He said his notes said in (c) there may be thousands of them, in (d) there may be just a few, in (e) there would be several thousand, and in

(h) there would be tens of thousands. He said that was probably the reason for the bill, because the DHES could not possibly deal with thousands and thousands of additional permits.

John Arrigo, Water Quality Bureau,DHES, said they were concerned about the class 5 injection wells. There are thousands of those in the Missoula Valley area where storm water from the streets soaks into the groundwater. It is on page 2 under (a) where it says: "discharges or activities regulated under the federal underground injection control program..." There are 5 types of injection wells. Class 2 are the oil field injections that they do not want to regulate. They would like to retain the ability to regulate the other injection wells. Class 5 were the drain wells that serve automotive shops and those type of businesses. There are thousands of those and the department would have to prioritize which ones would be permitted. Under (i) "subsurface disposal systems reviewed and approved by the department pursuant to Title 50, chapters 50 through 52...", those are community drain fields for trailer courts and campgrounds, and there are hundreds of those. Under (j) "the existing treatment works reviewed and approved by the department prior to October 29, 1982...", those would be sewage lagoons that do not discharge directly to streams but may leak into the groundwater. Under (k) "public water supply, distribution, or treatment facilities approved by the department pursuant to Title 75, chapter 6...", those would be important to permit because in treating water for drinking, often the sediments are disposed of next to the plant, and those are not regulated and could go into a stream. Under "(n) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.", there may be one every 5 years.

SEN. BROOKE asked **Mr. Arrigo,** under (a) who permits those facilities now. He replied in waste water disposal systems, the department approves and reviews the design. After that is constructed the department doesn't get involved. In the underground injection control program, the EPA has regulated the oil and gas, class 2 disposal wells. The EPA regulates some of the class 5 disposals, but they focus on wells from industry.

SEN. BROOKE said under (m) it was brought up that it should also be part of the regulations or the permitting activities of the department. **Mr. Arrigo** responded that the department works with DSL in the review of mining operations. They would retain their permitting authority for discharges to surface water. That cannot be delegated to the DSL.

Closing by Sponsor:

SEN. TVEIT said in response to some of the opponents, on Page 2, Line 23 it says: "Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit

monitoring information pursuant to 75-5-506." He said 75-5-506 says: "in order to carry out this chapter and effectively monitor discharge from sewage and industrial waste and other waste to the state waters, the department may require the owner, operator if any point source, or the owner, operator discharging into municipal waste sewage system..." He said SB 362 does not create or allow anything new from the current practices. He asked the committee to favorably consider SB 362.

{Tape: 3; Side: B}

{Comments: CHAIR. GROSFIELD relinquished the chair. to VICE CHAIRMAN, LARRY TVEIT, to present SB 371}

HEARING ON SB 371

Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, SD 13, Big Timber, said SB 371 defines outstanding resource waters. During the last interim when the nondegradation rules were developed, the Board of Health came up with rules authorizing them to designate outstanding resource waters, and there was some criticism that regarding the adopting of that rule. The major part of the controversy was that the statutes did not authorize the board to do that. They acted beyond the statutory authority by granting themselves the power to designate outstanding resource waters. They did that based upon the EPA rules under the Clean Water Act. However, there was some question as to whether the EPA had that authority in their rule-making. The concept of outstanding resource waters is not specifically mentioned in the federal Clean Water Act either. **SEN. GROSFIELD** said after that happened he submitted a bill draft request to clarify that there was authority to do that. The rule said that they may designate outstanding resource waters but gave few guidelines as to how they may do that. It seemed to make sense to have some procedure or criteria in place, and SB 371 tries to do that. Outstanding resource waters is a tough issue that other states have dealt with. Some of the other states are Wisconsin, California, and others. In Austin, Texas there were people interested in designating the stream that flows through the center of town. There were a lot of hearings, it got very controversial and in the end the board backed-off and didn't designate anything in Texas as of {The effective date of this act}.

SEN. GROSFIELD said on Page 2, Lines 28-30, it states: "Outstanding resource waters" means: state surface waters located in areas designated as national parks or national wilderness areas". He said the reason for making it "as of the effective date of this act: is that we know what we have now and he felt comfortable with designating surface waters in currently designated national parks and wilderness ares. However, future

parks or wilderness areas might involve waters that were not appropriate to be designated. For example, some people are contemplating asking Congress to make Virginia City a National Park. Page 3, Line 1-2 says: "other surface waters or ground waters classified by the board under the provisions of (section 3) and approved by the legislature." He said the resonf for this provision is that he does not want to make it easy to designate outstanding resource waters, because this disignation significantly limits activities that can take place on the designated drainage. On Page 5, Lines 4-6 it says: "A person may petition the board for rulemaking to classify waters as outstanding resource waters. The board shall initially review a petition against the criteria identified in subsection (3)(c) to determine whether the petition contained sufficient credible information for the board to accept the petition." On Page 5, Lines 11-12 it says: "The board may not adopt a rule classifying state waters as outstanding resource waters until it accepts a petition and finds that, based on a preponderance of the evidence:..." There are several steps to go through to identify whether or not they can be designated as outstanding resource waters. He said an EIS may be required if there could be impacts to social or economic values involved. Waters may not be issued a designation if it would cause significant adverse environmental, social, or economic impacts. It is very important that should be analyzed before they are designated as outstanding resource waters.

Proponents' Testimony:

Peggy Trenk, representing the Western Environmental Trade Association, said they were in support of SB 371, as the bill addresses a couple of concerns with the degradation rules that were adopted in July in regard to the outstanding resource waters. The bill clarifies that the Board of Health, with the approval of the legislature, does have the authority to designate outstanding resource waters. There were some different opinions that probably could have lead to litigation. The bill provides a clear process for the board to use in approving outstanding resource waters. Because of the potential impact on outstanding resource water's neighbors, they have to be given full knowledge of those impacts. The bill provides a good road map in making sure that occurs. They encourage the committee's support of SB 371.

Don Allen, representing Montana Wood Products Association, said they support SB 371. There were a lot of differences of opinion as to whether or not the board had the authority to adopt outstanding resource waters in its rules. The bill clarifies that and authorizes designations and they agree with the legislative intent where it says: "It is the further intent of the legislature that surface and ground water in Montana be designated as outstanding resource waters only if there is no other reasonable means of protecting the water." There was a concern that some rivers or streams would be designated as

outstanding resource waters and would have a tremendous negative impact on the traditional uses that were important to the economy of the state.

Joe Gutkoski, President, Madison Gallatin Alliance, said they agree with the intent of the outstanding resource waters. The federal government has a system designating wild, scenic, and recreational rivers, and it is only right for the state to designate outstanding resource rivers.

Richard Parks, representing the Northern Plains Resource Council, said they were cautiously supporting SB 371. At the top of Page 5, the first two lines appear to say the same thing. However they address two different sections of the Water Quality Act. On Page 6, Line 14 it says: "The board may not postpone or deny an application for an authorization to degrade state waters under 75-3-303 pending:..." If there is a potential for outstanding resource waters, an application is presented to the board and the board has accepted the application, and is in the process of dealing with it as if it might be an outstanding resource water. If the board then finds that it is an outstanding resource water and sends it to the legislature for approval but the legislature denies it, all of the good faith effort that has been put into this by the people that initiated the process, is now wasted because anyone can petition to degrade and short stop the whole process. The bill would have much more integrity if the words "or denied" were taken out of it. Don't compel the board to approve a degradation application when we have a situation where we think it will be designated as outstanding resource waters.

John Bloomquist, representing the Montana Stockgrowers Association, said they raised the issue in the nondegradation process regarding the authority of the board to grant ORW's. They are particularly important because under the rules there is no degradation allowed in an ORW. They didn't believe the rules as they were promulgated by the board were very clear. The positive aspect of the bill is identifying the authority and the clear definition of criteria to be considered for designating ORW's. It is very important to articulate the process for designation of ORW's. It is not an easy process and shouldn't be because we are talking about no degradation, no effect, no lowering of a parameter and that is a very high test and has very serious ramifications. He was concerned with the definitions on Page 2, Lines 28-30 that says: "state surface waters located in areas designated as national parks or national wilderness areas as of the effective date of this act..." **Mr. Bloomquist** said he thought it should say: "within the boundaries of those areas." The other concern was on Page 9, New Section 6, Nonsignificant activities, regarding subsection (2)(a) that says: "activities that are nonpoint sources of pollution when reasonable land, soil, and water conservation practices are applied..."

Mike Murphy, representing the Montana Water Resources Association, said they support SB 371. He said they had a

concern with existing facilities such as dams, irrigation, reservoirs, etc. located within the existing wilderness areas for potential new outstanding resource designations. There probably should be an amendment to Section 6, Nonsignificant activities, so there would be no question as to the ability to provide for activities necessary to maintain and operate those existing facilities. Those activities are already strictly controlled through the federal Wilderness Act.

Larry Brown, representing the Agricultural Preservation Association, said they were proponents to SB 371, but concur with **Mr. Murphy's** concerns. He commended **SEN. GROSFIELD** on the work he did in putting the package together for SB 371.

John Fitzpatrick, Pegasus Gold Corporation, said he is in support of the bill, but requested an amendment to Section 6, Nonsignificant activities. That section identifies a series of nonsignificant activities for nondegradation purposes, such as exploration for coal and uranium, and oil and gas drilling. They would like to request that metallic and nonmetallic mineral exploration performed in accordance with Title 82, Chapter 2-4 also be added to the legislation.

John Youngberg, representing the Montana Farm Bureau Federation, said they have all realized there were outstanding resource waters in Montana. During the rule-making process there were a number of concerns that were addressed. **SEN. GROSFIELD'S** bill has addressed those concerns with the exceptions of the concerns raised by **Mr. Murphy** about the wilderness areas. There were a number of irrigation projects in the Bitterroot that come out of dams located in the wilderness areas, and also concerns about the waters within those areas. They urge the committee's support of the bill and to consider those concerns.

Gail Abercrombie, Executive Director, Montana Petroleum Association, said the procedures for designating outstanding resource waters in the bill are very clear. It narrows the procedures on the federal level of setting protective classifications for land and waters that an agency approves and recommends a protective status.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. BROOKE said there was a concern about waters located within National Parks and National Wilderness Areas as opposed to boundary waters. In Glacier Park the boundary is the North Fork of the Flathead River and the Divide Creek on the eastern boundary. She asked **SEN. GROSFIELD** if those waters would be within the definition. He said the bill says "in the area designated", and an area may be larger than the actual

designation. As far as the boundary waters such as Glacier Park and also Yellowstone, he would have to think about that.

SEN. KEATING asked if the Yellowstone River that flows out of the Park would be considered an outstanding resource water. **SEN. GROSFIELD** replied yes, there are a number of streams that are within the boundary of Montana, but are inside national parks.

SEN. KEATING said the Yellowstone River is in the park and also in Montana. He asked what the bill did concerning that water. **SEN. GROSFIELD** responded that was designated as an outstanding resource water and the state could not grant an authorization to degrade. He supposed that perhaps the Park Service could develop a campground site and that would be nonsignificant for the outstanding resource waters. **SEN. KEATING** said there was mining at Jardine that is not too far from the Yellowstone River. Would a permit for a mining discharge that may get to a river be a potential under the bill. He asked if the bill would say that the state could not issue a permit under any circumstances. **SEN. GROSFIELD** said no, he didn't think so, in the example he gave, in order for the state to grant the mine at Jardine a discharge permit, it would have to meet the water quality standards of the Yellowstone River. If you were talking about the groundwater, it would have to be nonsignificant by the time it reached the surface water.

SEN. TVEIT asked what happens to the waters that are designated inside a park, when they leave the park, or a river or stream that runs into a park. How will the bill affect farmers and ranchers upstream from the parks when there has to be pristine water going into the parks. **SEN. GROSFIELD** said Yellowstone and Glacier Park were headwater areas. There was very little water that flows into those parks, so there is not anything upstream. He said the bill only deals with parks and wilderness areas as of the effective date of the act. There are some proposals to make some downstream areas in eastern Montana on the Missouri wilderness, but those would not be outstanding resource waters unless they went through the process of board approval. There could be a lot of issues that would have to be addressed before they could be designated as outstanding resource waters.

SEN. KEATING said Lake Abundance is below the Crown Butte Mine near Cooke City and outside the wilderness area. He said that Lake Abundance was the headwaters to the Stillwater River that runs through part of the Beartooth Wilderness area on its way out. There are mining operations outside the wilderness area and above the headwaters that run into the wilderness where these waters would then be designated as outstanding resource waters under SB 371. He asked if someone could say that Crown Butte can't get a permit because there is an opportunity that some of the run-off could degrade the Stillwater River as it flows into wilderness area. **SEN. GROSFIELD** said in the area around Crown Butte there are three drainages and each either flow into a wilderness area or a national park. The Crown Butte area goes

into the Absaroka Beartooth Wilderness to the west of Cooke City. He said the West Fork of the Clarks Fork, as it enters the wilderness area, is classified as B (1) water. The current water quality standards for B (1) at that point would have to be met with or without SB 371.

Closing by Sponsor:

SEN. GROSFIELD said they are trying to clarify and avoid litigation over whether or not the board has the authority and whether or not they can designate certain waters. The bill clarifies that. There is some concern about the maintenance of dams in wilderness areas and he thought that was taken care of in the bill, but would look into that further. The issue about the board may not deny an authorization to degrade pending board action or legislative approval; the reason that is in the bill is to avoid someone using the bill as a means to stop projects. That is not the intent of the bill. The purpose of the bill is to designate outstanding resource waters where they are appropriate.

{Comments: CHAIR GROSFIED RESUMED THE CHAIR}

EXECUTIVE ACTION ON SB 234

CHAIR. GROSFIELD announced that he would like to appoint a bipartisan subcommittee to review the technical amendments to SB 234. He said only the technical amendments would be dealth with, and he didn't think they would be controversial once they were understood. He appointed **SEN. WELDON, SEN. TVEIT, SEN. CHRISTIAENS** and himself to that subcommittee.

{Comments: the meeting was recorded on 3 tapes, 60 minutes each side.}

ADJOURNMENT

Adjournment: 9:15 PM

LORENTS GROSFIELD, Chairman

THEDA ROSSBERG, Secretary
by Sandy Herrin

LG/TR

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 2-13-95

NAME	PRESENT	ABSENT	EXCUSED
VIVIAN BROOKE	✓		
B.F. "CHRIS" CHRISTIAENS	✓		
MACK COLE	✓		
WILLIAM CRISMORE	✓		
MIKE FOSTER	✓		
TOM KEATING	✓		
KEN MILLER	✓		
JEFF WELDON	✓		
BILL WILSON	✓		
LARRY TVEIT, VICE CHAIRMAN	✓		
LORENTS GROSFIELD, CHAIRMAN	✓		

SEN:1995
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...TE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 2-13-95
BILL NO. SB-346

SENATE BILL 346

TESTIMONY
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

Steven L. Pilcher, Administrator
Water Quality Division

The Department of Health and Environmental Sciences has requested consideration of SB 346 in an attempt to deal with a problem that we currently face in administering the Montana Water Quality Act.

The Water Quality Act requires the Board of Health and Environmental Sciences to classify all waters of the State according to present and future beneficial uses. When Montana streams were classified in the mid 1960s, available water quality data was quite limited. Localized water quality problems such as those created by past mining activities were not recognized. We are now finding a number of stream segments that do not meet the assigned classification and do not support the designated beneficial uses.

A good example of this would be the Upper Blackfoot River near Lincoln where historic mining activities in the area of the Mikehorse, Anaconda, and Paymaster Mines have seriously impacted the quality of the Blackfoot River. That upper segment is not of the same quality as the lower river but has been given the same classification.

Senate Bill 346 represents a realistic way to address these water quality problems. Currently, the Board can reclassify and lower the classification of stream segments upon the finding that the current classification is higher than actual water quality that existed at the time of classification. Senate Bill 346 would allow the Board to change the standard but instead of writing off a stream with poor water quality it would establish a temporary standard for a stream segment. Such temporary classification would require the development of an implementation plan that ensures that higher water quality standards are met as soon as reasonably practical. In no case shall the temporary standard extend more than twenty years.

The Department, through its permitting responsibilities, would ensure the conditions and limitations designed to achieve compliance with the plan are enforced.

This bill, in no way allows anyone to degrade State waters. It is limited to those stream segments that suffer from past activities and provides a mechanism to restore those waters to better quality. We hope you will give favorable consideration to this request.

THANK YOU!

...E NATURAL RESO...
...T NO. 2
DATE 2-13-95
...LL NO. SB-346

SB 346, TEMPORARY WATER QUALITY STANDARDS
FEBRUARY 13, 1995, HEARING BEFORE (S) NAT.RES. COMM.
COMMENTS OF SIERRA CLUB, MONTANA CHAPTER

The goal behind SB 346 is a worthy one: to improve water quality limited segments of Montana surface and ground waters. A water quality limited segment of water is one in which all water quality standards are not currently being attained. The purpose of the bill is to establish temporary water quality standards that are more stringent on a parameter-by-parameter basis than existing water quality standards for a particular water body whose designated beneficial uses are not being met. Through implementation of these temporary standards in pollutant discharge permits, the State's goal to achieve all beneficial designated uses (e.g., swimming, fishing, drinking water, etc.) should be realized. See Bill, Section 3(1) at 3 lines 23 through 28.*

Under the bill, the Board may on its own, or upon recommendation of DHES, or upon a petition for rulemaking by any person, including a permit applicant or permittee, temporarily modify a water quality standard on a parameter-by-parameter basis in those instances in which substantive information indicates that a water body or segment thereof is not supporting its designated uses. See id. Within this mechanism lies the flaw of this bill.

To begin, the federal Clean Water Act requires Montana **proactively** to identify all water quality limited segments of water bodies due to both point source and non-point source pollution. 33 U.S.C. § 1313(d) and 40 C.F.R. § 130.1 et seq. After performing this analysis, the State must determine a "total maximum daily load" ("TMDL") of pollutants that may be discharged from point sources into such segments in order to allow all designated uses to be achieved. All permits thereafter issued must reflect the restricted amount of pollutants allowed to be discharged in order to attain designated uses. If the TMDL for a pollutant (i.e., a parameter) is less than the amount of the pollutant currently being discharged from point sources (which necessarily will be the case), current permittees must reduce the amounts of the pollutant discharged and no new point sources of that pollutant may be permitted. In this manner, the goal of the Clean Water Act to restore and maintain the chemical, physical

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* There may be cases in which nonpoint sources of pollution, for instance from agricultural runoff, may be the most significant sources of pollution in a stream segment. In these situations, it may not be possible to achieve all water quality standards exclusively through more stringent controls on point source pollution. Section 319 of the Clean Water Act provides federal dollars to Montana to design and implement nonpoint source pollution programs to alleviate this kind of problem.

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BILL NO. SB 346

and biological integrity of Montana's waters is achieved. See 33 U.S.C. § 1251.

Under SB 346, the State's response to water quality limited stream segments would be **reactive**, and also would be entirely discretionary with the Board. Even in the situation where a person petitioned for temporary standards, the Board would be within the bounds of its authority to deny the petition, as long as its decision to do so was reasonable. In this manner the bill is in clear conflict with federal law.

In addition, the federal Act does not allow the State to place the burden on the public to identify water quality limited segments or to propose the rules that would restrict pollutant discharges to allow all designated uses to be achieved. Under SB 346, the State acting through the Board or DHES, may propose temporary water quality standards to improve polluted stream segments, but the State does not necessarily have to do so. This provision is flatly inconsistent with the Clean Water Act.

Further, any other person wishing to have temporary standards promulgated must submit a petition for rulemaking supporting the request. A petition for rulemaking requires the petitioner to submit a detailed statement of reasons supporting the need for a new rule and to provide the proposed rules that the petitioner desires to have promulgated. Speaking as one who has prepared petitions for rulemaking, this is a heavy burden indeed. While it may be entirely appropriate and desirable for existing and potential permittees to be required to assist, or even fund, the State in its duty to promulgate TMDL's (or, under this bill, temporary standards), it is completely unreasonable to expect a citizen petitioner to conduct the water quality analyses and put forward the highly technical information necessary to support the basis of a TMDL. More importantly, however, the bill's purported attempt to shift this burden from the State to the public is contrary to explicit federal requirements set forth in the Clean Water Act.

Enacting a bill whose ostensible purpose is to fulfill federal requirements, but whose provisions directly contravene federal law would be bad policy for Montana. The bill, if it becomes State law, will be subject to U.S.E.P.A. review. Most assuredly, the EPA would veto the State's attempt to circumvent the requisite TMDL process. But even if EPA did not do so, citizens may legally challenge the EPA's failure to carry out its mandatory duty to ensure that the State's water quality laws fulfill the letter and spirit of the federal Clean Water Act. The upshot would be that the State may lose primacy to carry out Clean Water Act programs.

A good alternative to this bill would be legislation requiring permittees and permit applicants to fund the State's

...TE NATURAL RESOURCES
...IBIT NO. 2
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TMDL analyses. Such analyses, however, may not be confined only to water quality limited segments of water bodies where point source discharges exist or are proposed. Under the Clean Water Act, the State must analyze all water quality limited segments and come up with a plan to achieve all designated uses in those segments through permit discharge requirements. The logical starting point is dirty stream segments where existing point source dischargers are located, or alternatively where an applicant wishes to begin a new discharge (e.g., Daisy and Fisher Creeks at the New World mine site). In this way, the segments with existing or potential dischargers are analyzed and cleaned up first.

We request the Committee to table this bill as written, or to amend it to direct compliance with the TMDL provisions of the Clean Water Act.

DATED: February 15, 1995

Deborah S. Smith

Deborah S. Smith

FOR SIERRA CLUB, MONTANA CHAPTER

MRAN

MONTANA • RIVER • ACTION • NETWORK

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 2-13-95
BILL NO. SB-346

February 13, 1995

Senators Swysgood, Beck, Tweit, Forrester and Grosfield
Montana State Legislature
Helena, Montana 59601

SB:, 330, 371, 331, 362 and 346

The Montana River Action Network, its members and supporters, statewide, oppose the passage of these bills and wish to express our views through this letter.

These bills attempt to lower water quality standards and threaten water quality throughout Montana. The water resources of this great state belong to all the people and we believe the people of Montana deserve the highest quality water available. In the spirit and intent of the Federal Clean Water Act, we should be improving water quality, not degrading it in any way.

These bills are a threat to not only wildlife and fisheries, but pose an imminent and future threat to public health and welfare.

MRAN would ask the legislators in the Senate and House to vote no on each of these bills and vote for clean water for our children and their children to come.

Sincerely,

Kenneth J. Knapp
Executive Director

P.O. BOX 383 • HELENA, MONTANA • 59624
PHONE: 406.442.2398 • FAX: 406.449.8946

EXHIBIT NO. 4

DATE 2-13-95

Comments of the Montana Council of Trout Unlimited SB-330

to

Senate Natural Resources Committee, Montana Legislature

regarding

SB 330 and SB 331

submitted by

Bruce Farling, Montana Council of Trout Unlimited
February 13, 1995

Both SB 330 and 331 stray badly from what most Montanans expect for protection of water quality. Both bills would result in poorer water quality, and in turn harm the state's sportfishing industry, estimated to be worth $250 million to the state annually.

SB 331

Statement of Intent. We agree decisions should be made using sound scientific information and never on the basis of conjecture. However, because it is impractical to always guarantee 100 percent scientific certainty, at times some decisions have to be based on scientifically acceptable, calculable estimates. We recommend the standard of not basing a decision on projections and conjecture also be applied to the information that shows that economic and social benefits outweigh the values of protecting high quality water.

Section 1. It's bad policy and science to codify water quality standards. Currently they have to be reviewed by the board every three years. That allows new scientific information to be factored in to standards changes. By establishing standards under statute, instead of by rule with board approval, we are taking science out of the process for setting standards. We will then have to ask nonscientists, the legislature, to change standards in the political arena.

Section 2. It's bad science to limit water quality analysis only to dissolved constituents. Some pollutants can be harmful when in a non-dissolved state, and are best measured in surface water with total recoverable methods. For example, metals ions can attach to sediment particles, where they aren't detected by dissolved methods. These ions can be ingested by fish, insects or humans and then metabolized into forms that are harmful. This is a serious problem in mining polluted streams, such as the upper Clark Fork.

Section 2. Any adoption of standards that increases calculable risk of cancer should be done by the board with public involvement. This is too important an issue to be done in the frenzied pace of the Legislature.

...TE NATURAL RESOURCES
EXHIBIT NO. 4
DATE 2-13-95
BILL NO. SB-330

Section 3. Rules already allow for the establishment of site specific standards.

Section 4. The change in the definition of degradation and high quality waters means that most streams in the state could be degraded without a nondegradation review. We don't believe that's what the Montana public wants. The current definition, which was changed by the last legislature with the approval of industry, should remain.

Section 4. The proposed changes for "industrial and other wastes" means there would be no discharge permits for mining tailings impoundments or cyanide heap-leaches. This would result in no treatment of discharges and would ensure water quality at active and proposed mines would harm popular recreational waters such as the Blackfoot River and tributaries of the upper Yellowstone, harming local tourist and sportfish economies. We don't believe that's what Montanans want.

Section 4. The proposal to exempt ponds and lagoons from being classified as waters of the state could conflict with water rights. For example, this could mean the water in the Warm Springs Ponds on the Upper Clark Fork is not open for appropriation, which would upset a lot of ranchers downstream. This exemption might also clash with the Montana Constitution's definition of state waters.

Section 7. The term intermittent stream should be dropped. Many intermittent streams support fisheries part of the year.

Section 7. The reference to "cost effective and economical" should be dropped here and elsewhere in the statute. This qualifier guarantees EPA will take over Montana's discharge permit system because it says if a discharger can't afford pollution technology then he can violate standards. Water quality standards, by law, are designed to protect public health and the environment. It's the responsibility of the discharger to make his operation comply. He has an obligation to pay for practical, accepted pollution-control technology.

Section 7. Reviewing of Montana's stream classifications at least every three years will be a prohibitively exensive as well as unnecessary endeavor. How will it be paid for?

Section 8. What quality of "information" will trigger a classification review? This provision could lead to an expensive morass for the state.

Section 10. The proposed definition of natural means that any stream not subject to a nondegradation review, which under this statute would be very few, could be degraded down to their 1971 qualities. That means the upper Clark Fork could be polluted so that it would have very little aquatic life. This definition would undermine the natural resources damage claim the State of Montana has filed against ARCO, thereby squandering millions of dollars invested in science and legal resources. It would also mean Montana would not be able to restore the Clark Fork.

Section 13. The time limit for permit review is extremely inadequate. It would force EPA to take over the program. The prohibition limiting the introduction of new concerns in the review process would mean the public could suffer if the state overlooked a critical element of the permit early in the review.

Because public health could then be compromised, this is an unacceptable change in the current law.

Section 15. For reasons of cost effectiveness, board meetings for contested case hearings should continue to be in Helena.

Section 17. Allowing violators to be given credit for mitigation done after they are caught and cited, removes the deterrence value of civil penalties. It would make it cheaper to pollute and risk being caught.

SB 330

Section 9(b). This section must be stricken because many streams in Montana, including the Bitterroot, Clark Fork, Big Blackfoot, Lower Madison and others would not qualify as high quality waters. Therefore, they could be degraded without a nondegradtion review. Coupled with SB 331, it would mean these streams could be legally degraded to levels found before pollution control was prevalent.

Water quality standards should not be established by statute. As stated above, it's more useful and scientifically responsible to establish them through the current 3-year review process of the Board of Health.

New Section under 75-5-303. By changing the word "alternative" to "modification," the legislature severely narrows the available options for reducing harmful pollution from new sources.

MONTANA WILDLIFE FEDERATION

MONTANA WILDLIFE FEDERATION

P.O. Box 1175,
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Ph. 406-449-7604
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February 12, 1995

EXHIBIT NO. 5
DATE 2-13-95
BILL NO. SB-330

Senate Natural Resources Committee
Helena, Montana

Chairman Grosfield and Committee Members:

I am Alan Rollo from Great Falls with the Montana Wildlife Federation, requesting that you table Senate Bill 330.

As you are aware of, water quality standards in Montana can be very difficult to find consensus. The past two years of rule making showed just how contentious this issue is. I know that many people feel that our laws are too strict, preventing progress and prosperity but if this is the case, why are we seeing one of the strongest growths in the nation.

You are right if you feel that Montana citizens want businesses to grow but citizens also want the waters to be clean and healthy. So why make it easier for big businesses to pollute? This bill does just that by incorporating standards and definitions that can only mean a negative impact for all of us living here.

We need your help to keep Montana the "Last Best Place" that will bring prosperity while keeping our valuable waters protected. So please table SB 330 and let the new rules just recently put in place work.

Thank you.

Sincerely,

Alan Rollo
Montana Wildlife Federation

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From the desk of
Kenneth J. Knapp

...NATURAL RESOURCES
EXHIBIT NO. 6
DATE 2-13-95
BILL NO. SB-346

Member
N.S.F.R.E
National Society of Fund Raising Execuitves

Outdoor Writers Association of America
Board of Directors
Member, 1982-85

February 12, 1995

Senators Swysgood, Beck, Grosfield and Forrester
Montana State Legislature
1995 Session
Helena, Montana 59601

Gentleman,

I am writing this letter as a personal statement concerning the pending bills on Montana Water Quality to be heard in hearings tomorrow, February 13.

I am the Executive Director of the Montana River Action Network, a statewide river advocacy organization headquartered here in Helena. We represent constituents and members from all areas within Montana and a few from other western states. Our organization and its members are totally opposed to these bills that would reduce the water quality standards of this great state.

I would now like to state something more personal. I am a wildlife biologist. I attended Michigan State University and conducted wildlife research at the University of Oregon. I am a conservative Republican and former rancher from eastern Wyoming. I served on George Bushe's National Campaign Committee and helped get John Turner of Wyoming elected to the Wyoming Senate two times where he served with distinction before being appointed Director of the U.S. Fish & Wildlife Service in Washington D.C.

I could cite a multitude of scientific arguments against provisions and stipulations within these bills, but I think I will leave that to my noted conservationist colleagues who have lived here far longer I have.

Rather I would tell you all that for almost twenty five years I have written for outdoor publications like Field & Stream, Outdoor Life, Petersen's Hunting, Sports Afield and 22 other similar publications. I have written about hunting, fishing, wildlife, great waters and wild places we like to call wilderness. I have authored books, written television documentaries for C.B.S. News on Grizzly Bears and hundreds of articles about places called Bob Marshall, Selway, Bitterroot, Scapegoat and the Gallatins. This land is like no other, abundant with wildlife, open places and clean water.

P.O. Box 383 Helena, Montana 59624 (406) 458-5706

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Today, I am appalled and frightened by the proposed legislation that I have read in these four bills. Scientists, environmentalists, ranchers and natural resource managers, both State and Federal, have worked hard for the past fifty years to get our water quality laws where they are today. These bills, if passed and signed into law by Governor Rosciot would take us backward more than fifty years because the impacts on the water resources are greater today than they were then.

We cannot be short sighted in formulating water law. In the West, aquifers are going dry. New Mexico will soon be out of ground water. Some rivers that were once clear and abundant with wild fish are unusable by wildlife and humans because of salts, toxic waste, heavy metals and chronic de-watering.

If sell our water and quality to industry and special interests for the short term financial gain, then we have sold out our children and grandchildren who deserve to be left responsible choices that will come with future technologies and tomorrow's sciences.

This issue is not just about elk, deer, rainbow and cutthroat trout -- it is about human health. It is about the people of Montana and their right to have a drink of clean water, take their kids swimming and irrigate the land without fear of pollution.

A minister once gave an invocation at the national convention of the Outdoor Writers Association of America. It went something like this:

Lord, thank you for the quaking Aspen, the rising trout and bugling bull elk, the snow capped peaks and lush mountain meadows..

But Lord, if I should ever think these things are mine, remind me Lord, that these are but your wondrous creations and I am but a steward of these gifts.

We must all be good stewards of the lands, wildlife & waters. I implore you to not pass these bills and strengthen the laws of Montana to provide the protection the land and waters so desperately need.

Sincerely,

Kenneth J. Knapp
Outdoor Writer

SENATE NATURAL RESOURCES
EXHIBIT NO. 7
DATE 2-13-95
BILL NO. SB-330

Testimony of Nick Golder February 13, 1995 before the Senate Natural Resources Committee on SB 330 an SB 331

I'm Nick Golder. I ranch south of Forsyth and Forsyth is my address. I live near Colstrip. I first came there in 1947 so I've had a lot of first hand opportunity to learn the nuts and bolts of what happens when those people dig around in the aquifers that water my cattle. I have some workable ideas about how they can dig in the coal and water without permanently changing and contaminating wells and springs for myself and their other neighbors. I'm not a wild-eyed environmentalist. I think there are ways for them to handle their coal operations without ruining my water. I'm caught in a squeeze play between industry impacting my water, among other things, and the environmentalists who think my cows shouldn't eat grass ~~or~~ belch, etc.

Many conservatives and Republicans feel like they have long been denied their rights as American citizens and are being oppressed by the heavy hand of government. Now, in the pell-mell haste to redirect the course of the state--and the nation-- there is much evidence they haven't noticed there is a baby in some of the bathwater they are throwing out. In the effort to "free up" the citizens' businesses in the state will the pendulum be allowed to swing so far to the other extreme that all the copper king and robber baron types will close in on us like packs of wolves?

For approximately the past year and a half I have served on a state ground-water committee. Everyone who might be interested was invited. We met together to agree on what general direction to take - and that took some doing to decide. Because of the complexities of the issues we broke into three subcommittees and intermittently worked together and separately during that time. We solicited input from all over the state. It was slow and ponderous, but we finally worked out some plans that a cross section of the state's people decided was workable and reasonable. We found we had so many thorny issues that we didn't get them ironed out in time to draft legislation for this session. But we did finally arrive at general consensus.

So,, with all that fresh in my mind, it seems a shame to see this legislature

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SB-330

steamroller through some things you simply don't have time and exposure to gauge the net effect of what is proposed in these bills.

There is a great hue and cry about practices that squander the taxpayers' money. There is a need to put an end to wasteful practices. But will we squander our natural resources, creating more and more superfund sites in the name of finances and jobs? How many more Berkeley pits do we need to generate?

Do the people of this committee and in this legislature have the courage and integrity to stand firm against, and make a statement to those who would generate an increasing legacy of superfund sites for our kids, meanwhile touting the jobs produced.

Ladies and gentlement of this committee and of this legislature, I implore you to look carefully at the long term effects of what you do here. There is some bathwater to be thrown out, but there is a baby in some of it. There are environmental laws and regulations that were crafted because of those who abused the law. Getting rid of the law will invite worse abuse.

MISSOULA CITY-COUNTY HEALTH DEPARTMENT
301 WEST ALDER ST
MISSOULA MT 59802-4123
(406) 523-4755

SENATE NATURAL RESOURCES
EXHIBIT NO. 8
DATE 2-13-95
BILL NO. SB-330 + 331

TESTIMONY CONCERNING SENATE BILL 331

February 13, 1995

Senate Natural Resources Committee
Senator Grosfield, Chairman
Montana Legislature
Helena MT 59620

Mr Chairman, members of the committee.

My name is Jim Carlson, Director of the Environmental Health Division, Missoula City-County Health Department.

I wish to oppose Senate Bill 331 for the following reasons:

Senate Bill 331 is a major restructuring of the State Clean Water Act.

-It weakens the criteria for public exposure to carcinogens to level much less stringent than most states.
-The changes in the definition of degradation would require a complete revision of the non-degradation rules, which are only a few months old, at considerable expense to the State of Montana.
-It would weaken the nitrate standard for non-degradation in groundwater at the drinking water standard. That means that it would be legal for a source to contaminate groundwater to the point that the Federal drinking water Standard would be violated. If that groundwater was used as a public drinking water supply, we would be required to shut down the drinking water supply due to violation of the public health standard.

The non-degradation requirements must serve to protect our groundwaters ad a viable source of drinking water. In Missoula groundwater is our sole source of drinking water.

It is our understanding that there are a number of amendments proposed for this bill. We have not seen these amendments. We would request that the committee rehear the bill after these amendments have been made incorporated to ensure that the public has the opportunity to comment and help fine tune the bill before it is passed on to the Senate.

In summary, we stand in opposition to this bill which weakens the State Clean Water Act as to prevent adequate protection of public resources and public health.

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To Chuck Stilwell	From Bill Stuttefield
Co.	Co.
Dept.	Phone #
Fax #	Fax #

DATE 2-13-95
BILL NO. SB-39 13 F
10-26

OCT 1 1993

OFFICE OF WATER

MEMORANDUM

SUBJECT: Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria

FROM: Martha G. Prothro
Acting Assistant Administrator for Water

TO: Water Management Division Directors
Environmental Services Division Directors
Regions I-X

Introduction

The implementation of metals criteria is complex due to the site-specific nature of metals toxicity. We have undertaken a number of activities to develop guidance in this area, notably the Interim Metals Guidance, published May 1992, and a public meeting of experts held in Annapolis, MD, in January 1993. This memorandum transmits Office of Water (OW) policy and guidance on the interpretation and implementation of aquatic life criteria for the management of metals and supplements my April 1, 1993, memorandum on the same subject. The issue covers a number of areas including the expression of aquatic life criteria; total maximum daily loads (TMDLs), permits, effluent monitoring, and compliance; and ambient monitoring. The memorandum covers each in turn. Attached to this policy memorandum are three guidance documents with additional technical details. They are: Guidance Document on Expression of Aquatic Life Criteria as Dissolved Criteria (Attachment #2), Guidance Document on Dynamic Modeling and Translators (Attachment #3), and Guidance Document on Monitoring (Attachment #4). These will be supplemented as additional data become available. (See the schedule in Attachment #1.)

Since metals toxicity is significantly affected by site-specific factors, it presents a number of programmatic challenges. Factors that must be considered in the management of metals in the aquatic environment include: toxicity specific to effluent chemistry; toxicity specific to ambient water chemistry; different patterns of toxicity for different metals; evolution of the state of the science of metals toxicity, fate, and transport; resource limitations for monitoring, analysis, implementation, and research functions; concerns regarding some of the analytical data currently on record due to possible sampling and analytical contamination; and lack of standardized protocols for clean and ultraclean metals analysis. The States have the key role in the risk management process of balancing these factors in the management of water programs. The site-specific nature of this issue could be perceived as requiring a permit-by-permit approach to implementation. However, we believe

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that this guidance can be effectively implemented on a broader level, across any waters with roughly the same physical and chemical characteristics, and recommend that we work with the States with that perspective in mind.

Expression of Aquatic Life Criteria

o Dissolved vs. Total Recoverable Metal

A major issue is whether, and how, to use dissolved metal concentrations ("dissolved metal") or total recoverable metal concentrations ("total recoverable metal") in setting State water quality standards. In the past, States have used both approaches when applying the same Environmental Protection Agency (EPA) criteria numbers. Some older criteria documents may have facilitated these different approaches to interpretation of the criteria because the documents were somewhat equivocal with regards to analytical methods. The May 1992 interim guidance continued the policy that either approach was acceptable.

It is now the policy of the Office of Water that the use of dissolved metal to set and measure compliance with water quality standards is the recommended approach, because dissolved metal more closely approximates the bioavailable fraction of metal in the water column than does total recoverable metal. This conclusion regarding metals bioavailability is supported by a majority of the scientific community within and outside the Agency. One reason is that a primary mechanism for water column toxicity is adsorption at the gill surface which requires metals to be in the dissolved form.

The position that the dissolved metals approach is more accurate has been questioned because it neglects the possible toxicity of particulate metal. It is true that some studies have indicated that particulate metals appear to contribute to the toxicity of metals, perhaps because of factors such as desorption of metals at the gill surface, but these same studies indicate the toxicity of particulate metal is substantially less than that of dissolved metal.

Furthermore, any error incurred from excluding the contribution of particulate metal will generally be compensated by other factors which make criteria conservative. For example, metals in toxicity tests are added as simple salts to relatively clean water. Due to the likely presence of a significant concentration of metals binding agents in many discharges and ambient waters, metals in toxicity tests would generally be expected to be more bioavailabile than metals in discharges or in ambient waters.

If total recoverable metal is used for the purpose of water quality standards, compounding of factors due to the lower bioavailability of particulate metal and lower bioavailability of metals as they are discharged may result in a conservative water quality standard. The use of dissolved metal in water quality standards gives a more accurate result. However, the majority of the participants at the Annapolis meeting felt that total recoverable measurements in ambient water had some value, and that exceedences of criteria on a total recoverable basis were an indication that metal loadings could be a stress to the ecosystem, particularly in locations other than the water column.

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The reasons for the potential consideration of total recoverable measurements include risk management considerations not covered by evaluation of water column toxicity. The ambient water quality criteria are neither designed nor intended to protect sediments, or to prevent effects due to food webs containing sediment dwelling organisms. A risk manager, however, may consider sediments and food chain effects and may decide to take a conservative approach for metals, considering that metals are very persistent chemicals. This conservative approach could include the use of total recoverable metal in water quality standards. However, since consideration of sediment impacts is not incorporated into the criteria methodology, the degree of conservatism inherent in the total recoverable approach is unknown. The uncertainty of metal impacts in sediments stem from the lack of sediment criteria and an imprecise understanding of the fate and transport of metals. EPA will continue to pursue research and other activities to close these knowledge gaps.

Until the scientific uncertainties are better resolved, a range of different risk management decisions can be justified. EPA recommends that State water quality standards be based on dissolved metal. (See the paragraph below and the attached guidance for technical details on developing dissolved criteria.) EPA will also approve a State risk management decision to adopt standards based on total recoverable metal, if those standards are otherwise approvable as a matter of law.

o Dissolved Criteria

In the toxicity tests used to develop EPA metals criteria for aquatic life, some fraction of the metal is dissolved while some fraction is bound to particulate matter. The present criteria were developed using total recoverable metal measurements or measures expected to give equivalent results in toxicity tests, and are articulated as total recoverable. Therefore, in order to express the EPA criteria as dissolved, a total recoverable to dissolved correction factor must be used. Attachment #2 provides guidance for calculating EPA dissolved criteria from the published total recoverable criteria. The data expressed as percentage metal dissolved are presented as recommended values and ranges. However, the choice within ranges is a State risk management decision. We have recently supplemented the data for copper and are proceeding to further supplement the data for copper and other metals. As testing is completed, we will make this information available and this is expected to reduce the magnitude of the ranges for some of the conversion factors provided. We also strongly encourage the application of dissolved criteria across a watershed or waterbody, as technically sound and the best use of resources.

o Site-Specific Criteria Modifications

While the above methods will correct some site-specific factors affecting metals toxicity, further refinements are possible. EPA has issued guidance (Water Quality Standards Handbook, 1983; Guidelines for Deriving Numerical Aquatic Site-Specific Water Quality Criteria by Modifying National Criteria, EPA-600/3-84-099, October 1984) for three site-specific criteria development methodologies: recalculation procedure, indicator species procedure (also known as the water-effect ratio (WER)) and resident species procedure. Only the first two of these have been widely used.

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In the National Toxics Rule (57 FR 60848, December 22, 1992), EPA identified the WER as an optional method for site-specific criteria development for certain metals. EPA committed in the NTR preamble to provide guidance on determining the WER. A draft of this guidance has been circulated to the States and Regions for review and comment. As justified by water characteristics and as recommended by the WER guidance, we strongly encourage the application of the WER across a watershed or waterbody as opposed to application on a discharger by discharger basis, as technically sound and an efficient use of resources.

In order to meet current needs, but allow for changes suggested by protocol users, EPA will issue the guidance as "interim." EPA will accept WERs developed using this guidance, as well as by using other scientifically defensible protocols. OW expects the interim WER guidance will be issued in the next two months.

Total Maximum Daily Loads (TMDLs) and National Pollutant Discharge Elimination System (NPDES) Permits

o Dynamic Water Quality Modeling

Although not specifically part of the reassessment of water quality criteria for metals, dynamic or probabilistic models are another useful tool for implementing water quality criteria, especially for those criteria protecting aquatic life. These models provide another way to incorporate site-specific data. The 1991 Technical Support Document for Water Quality-based Toxics Control (TSD) (EPA/505/2-90-001) describes dynamic, as well as static (steady-state) models. Dynamic models make the best use of the specified magnitude, duration, and frequency of water quality criteria and, therefore, provide a more accurate representation of the probability that a water quality standard exceedence will occur. In contrast, steady-state models make a number of simplifying, worst case assumptions which makes them less complex and less accurate than dynamic models.

Dynamic models have received increased attention over the last few years as a result of the widespread belief that steady-state modeling is over-conservative due to environmentally conservative dilution assumptions. This belief has led to the misconception that dynamic models will always lead to less stringent regulatory controls (e.g., NPDES effluent limits) than steady-state models, which is not true in every application of dynamic models. EPA considers dynamic models to be a more accurate approach to implementing water quality criteria and continues to recommend their use. Dynamic modeling does require commitment of resources to develop appropriate data. (See Attachment #3 and the TSD for details on the use of dynamic models.)

o Dissolved-Total Metal Translators

Expressing water quality criteria as the dissolved form of a metal poses a need to be able to translate from dissolved metal to total recoverable metal for TMDLs and NPDES permits. TMDLs for metals must be able to calculate: (1) dissolved metal in order to ascertain attainment of water quality standards, and (2) total recoverable metal in order to achieve mass balance necessary for permitting purposes.

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EPA's NPDES regulations require that limits of metals in permits be stated as total recoverable in most cases (see 40 CFR §122.45(c)) except when an effluent guideline specifies the limitation in another form of the metal, the approved analytical methods measure only dissolved metal, or the permit writer expresses a metals limit in another form (e.g., dissolved, valent, or total) when required to carry out provisions of the Clean Water Act. This is because the chemical conditions in ambient waters frequently differ substantially from those in the effluent, and there is no assurance that effluent particulate metal would not dissolve after discharge. The NPDES rule does not require that State water quality standards be expressed as total recoverable; rather, the rule requires permit writers to translate between different metal forms in the calculation of the permit limit so that a total recoverable limit can be established. Both the TMDL and NPDES uses of water quality criteria require the ability to translate between dissolved metal and total recoverable metal. Attachment #3 provides methods for this translation.

Guidance on Monitoring

o Use of Clean Sampling and Analytical Techniques

In assessing waterbodies to determine the potential for toxicity problems due to metals, the quality of the data used is an important issue. Metals data are used to determine attainment status for water quality standards, discern trends in water quality, estimate background loads for TMDLs, calibrate fate and transport models, estimate effluent concentrations (including effluent variability), assess permit compliance, and conduct research. The quality of trace level metal data, especially below 1 ppb, may be compromised due to contamination of samples during collection, preparation, storage, and analysis. Depending on the level of metal present, the use of "clean" and "ultraclean" techniques for sampling and analysis may be critical to accurate data for implementation of aquatic life criteria for metals.

The magnitude of the contamination problem increases as the ambient and effluent metal concentration decreases and, therefore, problems are more likely in ambient measurements. "Clean" techniques refer to those requirements (or practices for sample collection and handling) necessary to produce reliable analytical data in the part per billion (ppb) range. "Ultraclean" techniques refer to those requirements or practices necessary to produce reliable analytical data in the part per trillion (ppt) range. Because typical concentrations of metals in surface waters and effluents vary from one metal to another, the effect of contamination on the quality of metals monitoring data varies appreciably.

We plan to develop protocols on the use of clean and ultra-clean techniques and are coordinating with the United States Geological Survey (USGS) on this project, because USGS has been doing work on these techniques for some time, especially the sampling procedures. We anticipate that our draft protocols for clean techniques will be available in late calendar year 1993. The development of comparable protocols for ultra-clean techniques is underway and will be available in 1995. In developing these protocols, we will consider the costs of these techniques and will give guidance as to the situations where their use is necessary. Appendix B to the WER guidance document provides some general guidance on the use of

EPA OST 006

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clean analytical techniques. (See Attachment #4.) We recommend that this guidance be used by States and Regions as an interim step, while the clean and ultra-clean protocols are being developed.

o Use of Historical Data

The concerns about metals sampling and analysis discussed above raise corresponding concerns about the validity of historical data. Data on effluent and ambient metal concentrations are collected by a variety of organizations including Federal agencies (e.g., EPA, USGS), State pollution control agencies and health departments, local government agencies, municipalities, industrial dischargers, researchers, and others. The data are collected for a variety of purposes as discussed above.

Concern about the reliability of the sample collection and analysis procedures is greatest where they have been used to monitor very low level metal concentrations. Specifically, studies have shown data sets with contamination problems during sample collection and laboratory analysis, that have resulted in inaccurate measurements. For example, in developing a TMDL for New York Harbor, some historical ambient data showed extensive metals problems in the harbor, while other historical ambient data showed only limited metals problems. Careful resampling and analysis in 1992/1993 showed the latter view was correct. The key to producing accurate data is appropriate quality assurance (QA) and quality control (QC) procedures. We believe that most historical data for metals, collected and analyzed with appropriate QA and QC at levels of 1 ppb or higher, are reliable. The data used in development of EPA criteria are also considered reliable, both because they meet the above test and because the toxicity test solutions are created by adding known amounts of metals.

With respect to effluent monitoring reported by an NPDES permittee, the permittee is responsible for collecting and reporting quality data on a Discharge Monitoring Report (DMR). Permitting authorities should continue to consider the information reported to be true, accurate, and complete as certified by the permittee. Where the permittee becomes aware of new information specific to the effluent discharge that questions the quality of previously submitted DMR data, the permittee must promptly submit that information to the permitting authority. The permitting authority will consider all information submitted by the permittee in determining appropriate enforcement responses to monitoring/reporting and effluent violations. (See Attachment #4 for additional details.)

Summary

The management of metals in the aquatic environment is complex. The science supporting our technical and regulatory programs is [illegible] in all areas. The policy and guidance outlined above represent the position of OW and should be incorporated into ongoing program operations. We do not expect that ongoing operations would be delayed or deferred because of this guidance.

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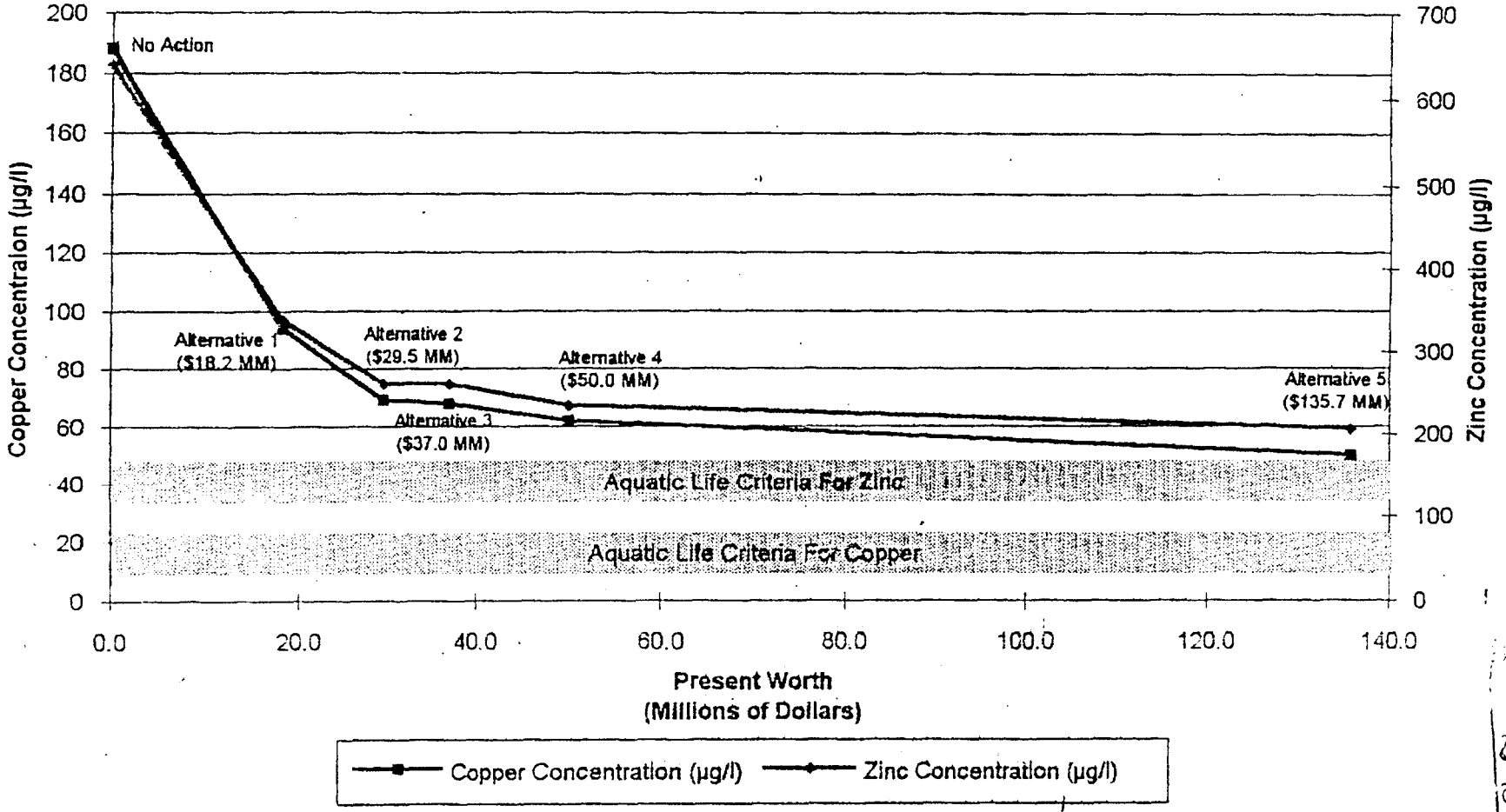
If you have questions concerning this guidance, please contact Jim Hanlon, Acting Director, Office of Science and Technology, at 202-260-5400. If you have questions on specific details of the guidance, please contact the appropriate OW Branch Chief. The Branch Chiefs responsible for the various areas of the water quality program are: Bob April (202-260-6378, water quality criteria), Elizabeth Fellows (202-260-7046, monitoring and data issues), Russ Kinerson (202-260-1330, modeling and translators), Don Brady (202-260-7074, Total Maximum Daily Loads), Sheila Frace (202-260-9537, permits), Dave Sabock (202-260-1315, water quality standards), Bill Telliard (202-260-7134, analytical methods) and Dave Lyons (202-260-8310, enforcement).

Attachments

STATE NATURAL RESOURCES
EXHIBIT NO. 10
DATE 2-13-95
BILL NO. SB-321

RESIDUAL COPPER AND ZINC CONCENTRATIONS IN SILVER BOW CREEK FOR EE/CA RESPONSE ALTERNATIVES



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NATURAL RESOURCES
EXHIBIT NO. 11
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ARSENIC WATER QUALITY STANDARDS

CURRENT MONTANA & EPA DRINKING WATER STANDARD	0.05 ppm
CHRONIC AQUATIC VALUE TO PROTECT FISH & AQUATIC LIFE	0.19 ppm
CURRENT MONTANA HUMAN HEALTH STANDARD	0.000018 ppm
PROPOSED 10^3 HEALTH RISK BASED STANDARD	0.02 ppm
AVERAGE ARSENIC 1992 MISSOURI RIVER AT TOSTON	0.024 ppm

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ERA® PROPERTY STORE

SENATOR LARRY J. TVEIT
NATURAL RESOURCES DEPT.
HELENA, MT

I URGE YOU TO VOTE IN FAVOR OF SENATE BILL 331.

THANK YOU.

PAM WILLETT
BROKER/OWNER

2120 GRAND AVENUE · BILLINGS, MT 59102 · 406-652-5500

Each office independently owned and operated

TO: SENATORS
LARRY TVEIT
LORENTS GROSFIELD
VIVIAN BROOKE

SENATE NATURAL RESOURCES
EXHIBIT NO. 13
DATE 2-13-95
BILL NO. SB-331

RE: SENATE BILL 331

PLEASE SUPPORT SB 331! RECENT LEGISLATION HAS MADE IT ALMOST IMPOSSIBLE TO INSTALL A SEPTIC SYSTEM IN MUCH OF RURAL MT. A MAJOR BLOW TO AFFORDABLE HOUSING AND OUR RURAL RESIDENTS IN GENERAL!

WE SHOULD NOT HOLD RURAL TAXPAYERS TO STANDARDS WHICH ARE HIGHER THAN THOSE OF RESIDENTS ON MUNICIPAL SEWER SYSTEMS. LET'S BE FAIR.

DAVID M BAILEY HM # 755 3965
P.O. BOX 10 WK # 752-1555

SB 330, SB 331 SENATE NATURAL RESOURCES 2/13/95 (1)
EXHIBIT NO. 14
DATE 2-13-95
BILL NO. SB-331

By way of introduction, my name is Dave Gano, I'm a blacksmith, and raise beef cattle with my family. We live on Tony Crik, east of Melville, in Sweet Grass county and I am not a political activist. I am currently serving as Vice-chair of Cottonwood Resource Council, which is one of several political action groups in Sweet Grass County. How a non-political activist is currently Vice-chair of a citizen's action group is kind of a funny story which I won't go into. I attend meetings, I write letters, read newsletters, study draft legislation, make phone calls, and occasionally travel to Helena to try to make a voice for what I believe in. The reason I'm not a political activist is because I have no faith in politics — less so, now, than I did when I first became involved with CRC and really began trying to educate myself, politically. Personally, I'm convinced that the only real hope we have for ourselves and Creation is Spiritual, and just as soon as I get my own unruly self into line, the rest of you might hear more from me on the subject, but, judging by my current progress, I won't be in a position to preach to anyone in this lifetime. All the same, Spirit is the reason I'm here — or, rather, there - or, actually.... not there. The reason I'm not there is because I'm calving (not me, but our cows, you understand). The reason I'm involving myself in this process (against my preference and my nature), the reason I look like a political activist when I'm not, the reason I am sometimes mistaken for the blankety blank environmentalist that everybody is so afraid of, and the reason I'm submitting this to

In exchange for the gift of life, I am obligated to show the utmost respect for Her Creation and to do my best to love and care for... to be a Good Steward, to be a Good Husbandman. I don't always want to do it, and often when I try, I dissapoint myself, but I don't really have a choice. I have to keep trying.

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Technology and the Law are not my gods. I obey the law (almost always), and I respect technology, but they are both very limited systems in the over all scheme of things. Technology, like Statistics, can be made to argue any point of view, and is often called upon to argue opposing points of view! And, as for the Law.... having personally made repeated and determined assaults on stacks of legal documents, I am convinced that Legal Language is the province of a tribe of demons, related directly to the bunch behind the Infernal Revenue Service, who work in the dark hours to cast Stupefying Spells to discourage anyone who hasn't been initiated from peering into their Domain!

You all must work within that realm. That prompts my admiration and, at the same time, arouses my suspicions! While you may be comfortable with the Law, you may understand "Legaleeze", you may even love it, I suggest that the Law's purpose is to serve Life, and not the other way around. That's why my voice is as valid as legal or technological testimony.... Because the real issue is always one of Balance — critical, and maybe impossible to maintain.

Water is out of balance. We've taken it so

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that it's no surprise that our misuse and abuse is catching up with us. Those of us fortunate enough to live in Montana are luckier than most of us in this country. We still have relatively good water, but that's no reason for complacency. This is not a time to take further liberties. We are obligated, as good stewards, to safeguard what we are blessed with, and if that means all of us, I guess we better start doing whatever it's going to take.

Ranchers are notoriously independent, as a group - which we aren't, because we can never agree on anything, and we don't like crowds! We live and work alone, alot, and are regularly confronted by situations that nobody else can, or will, deal with. The life fosters and encourages independence so we don't even like the <u>notion</u> of somebody else telling us what we can or can't, should or shouldn't do - not the blankety-blank bureaucrats and not the blankety blank environmentalists, either but if we are all part of the problem, then we all have to be part of the solution, or there will be no solution. Ultimately, it is in our own best interest.

I have never met a person who I thought wise who claimed that quality for his or her self. Anybod who tells me he is wise has just disqualified himself, in my book. If he was really wise, he'd be wise enough to keep his mouth shut about it. So, the self-proclaimed wise reveal themselves to me a fools. Intelligent? Probably. Brilliant? Possibly. Wis I don't think so - just another fool, and fools I

I can remember. That's why I don't argue facts, figures, and logic. The truth about that stuff is that it's just what we use to try to make our own point of view look real. But, more than that, I can't keep track of things like that - I just don't work that way! So, if my testimony seems foolish to you, that may be entirely apropriate. At least I've said my say and I thank you for the opportunity. In closing, I'll leave you with the question of what you think is more straight forward - a load of horse manure that admits it came from a horse, or a load of manure that presumes itself to be wise!

EXHIBIT NO. 14
DATE 2-13-90
BILL NO. SB-331

Dave Cano
Melville, MT

SENATE NATURAL RESOURCES
EXHIBIT NO. 15
DATE 2-13-95
BILL NO. SB-331

Senate Natural Resources Committee
Monday, February 13, 1995
Testimony on Senate Bill 331
Glenn Marx, Policy Director, Governor Racicot's Office

Mr. Chairman, for the record I'm Glenn Marx and I serve as policy director for Governor Marc Racicot.

As you've heard from some of the proponents of this bill, during the last two weeks the sponsor of the SB 331, mining industry representatives and management and staff at the Department of Health and Environmental Sciences have been meeting in an attempt to reach technical and procedural agreements regarding the contents of this bill.

Those discussions have been largely successful, and the governor offers his sincere appreciation to the sponsors of this bill and the department for the "good faith" cooperative approach on this bill. Had the industry decided to rush forward with its absolute legislative wish list, it would have touched off the kind of useless and wasteful environmental emotional holy war that nobody wins. The lengthy discussions between industry and the department were productive in that, from the State's standpoint at least, such a war is not necessary. But it appears we can't get by without at least a factual skirmish.

It is also worth pointing out the original version of this bill would have probably resulted in the loss of water quality primacy for the state. This new version of the bill abolishes that aspect of discussion and allows us to scale the debate back to what I'm sure will be a stimulating discussion focused in part on risk assessment.

Yes, risk assessment is one key area of disagreement. But this is a legitimate area of dispute, an area which merits a public policy focus, and therefore an area which deserves serious legislative examination. The Governor respects the position of industry in seeking to retain and expand job opportunities in Montana, and respects the department obligation of environmental regulation to protect public health and aquatic life. Neither focus, of course, is exclusive. Industry does demonstrate environmental stewardship, and the department does recognize that people must live and work in this state, and that the actions of people impact water quality.

The department will follow me and offer specific language for a handful of amendments which address the State's concerns. As an introduction to those amendments, and as a framework for policy discussion of two critical areas, let me provide some background information on the Governor's approach to this bill and water quality protection.

The State of Montana has a legal and constitutional obligation to protect public health. Every comment made by me the department

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must be filtered through that obligatory screen. And not only does that public health screen determine regulatory actions here and now, but it must also provide a baseline of protection for environmental consequences unknown or uncertain now, and only felt in the near or distant future. That regulatory baseline can be described in one word: prevention.

This emphasis on prevention serves as the basis for two key policy amendments to SB 331. These amendments center on Section 2 of the bill, and relate to one, the publicly-accepted public health risk for cancer-causing agents...and two, a procedurally-sound way to measure metals in streams. Prevention and caution, constrained by real-world realities, form the basis of virtually every amendment the State proposes.

Right now in Montana, the acceptable risk of contracting cancer through water-borne pollutants is one in one-million. That standard is set in both law and rule. This bill proposes to change that risk threshhold to one in ten-thousand for all cancer-causing agents except arsenic, which would be one in one-thousand.

Montana, like most western states, has a high rate of natural aresnic and Montana's policies must reflect that natural aresnic rate. Yet standards should be, must be, and will be, set. And because of the State's fundamental obligation of true health risk prevention, we propose to modify both the existing legal standards and the proposed changed standards suggested in this bill. From a scientific and public health standpoint, the State believes it is safe to lower the cancer-causing agent threshhold from one in one-million to one in one hundred thousand. That figure should be compared to your risk of dying in a car wreck, which is one in sixty-five. Roughly half the states in the nation have adopted the one in one hundred thousand cancer risk level from water-borne pollutants.

Aresnic presents a separate challenge, and is a separate issue. The state believes public health would still be protected by lowering the aresnic threshhold to one in one thousand. Thus, in this case, we concur with the sponsor's amendments.

Agreeing to lower a standard is not an easy decision to make. Keep in mind this new rate would be set at about 18 parts per billion, which is detectable and is approximately the naturally occurring rate of aresnic in Montana. The drinking water standard for aresnic is 50 parts per billion, which means the proposed level of 18 parts per billion is more than twice as stringent as the drinking water standard.

The State does not believe we in any way compromise public health by proposing this risk threshhold. And we reserve the right to aggressively move to modify this established risk threshhold with the advent of any new available scientific information.

It should be pointed out that establishing a risk threshhold

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is not nearly as tidy, nor precise, as convicting a criminal. Science is continually evolving, technology is constantly improving, and new debates are perpetually stirred. Acceptable risk levels of cancer-causing agents is invariably not a sheer scientific decision nor a strictly government decision but is in fact a public policy decision based upon public's tolerance for -- and acceptance of -- risk. It is appropriate that the Legislature, as representatives of the people of Montana, make a public policy decision -- with full public comment -- based upon the best information available. In fact, this is the exact public process EPA wants states to follow in establishing risk levels. The DHES will assist you in any way possible, and the State has provided a risk recommendation based upon what we see through the filter of public health protection.

The second serious policy issue in the bill is the question of what process is used to count impurities in the water. Should the state measure only dissolved metals in the water or should the state measure the total recoverable metals?

The State believes measurement should be consistent and expansive to make sure we quantify actual parameters of everything we can, in fact, quantify. That is, it seems to us, the only true test of actual water quality. When you are on a diet, you have to count every calorie, because every calorie contributes to weight gain. When you protect water, you have to count every impurity, because every impurity contributes to water degradation. I'm sure the department will have a more scientific example of why the State proposes an amendment to this aspect of SB 331. But simply put, water quality protection should be inclusive, not exclusive.

Mr. Chairman, while the State stands as an opponent to this bill, it does so recognizing the tremendous amount of work by the sponsor and the department which preceded this hearing. We also recognize there are only a couple significant areas of policy dispute and a few other procedural disputes embodied in the bill. But the basic obligation to protect public health and err on the side of prevention compels the State to take this posture. Should the department's amendments be adopted, the State would be in support this bill.

Thank you for the opportunity to testify.

SENATE NATURAL RESOURCES
EXHIBIT NO. 16
DATE 2-13-95
BILL NO SB-331

SENATE BILL 331

TESTIMONY
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

Steven L. Pilcher, Administrator
Water Quality Division

The Department of Health and Environmental Sciences appears before you today in opposition to SB 331 in the introduced form. Let me begin by recognizing the substantive amendments being offered by the sponsor. The water quality division has been working with industry representatives on these proposed amendments for some time and we appreciate the opportunity to discuss and resolve many of the concerns and issues of the bill. Mr. Marx, on behalf of Governor Racicot has provided an excellent summary of our position on the bill and I would like to follow with more technically based testimony on several provisions of the bill.

Section 1 seeks to restrict the ability of the board to adopt standards which are more stringent than federal standards by requiring significant findings and justification. I would point out that our standards are based on federal guidelines and are submitted to and approved by the Federal Environmental Protection Agency with the important exception of ground water standards. There are no federal guidelines or standards for ground water. This provision would limit our ability to adopt technology based treatment requirements when EPA has failed to do so.

Section 2 proposes water quality standards that would not meet federal guidance and would not be approved by EPA. If these standards are approved, EPA would move to adopt our current standards creating a duplicate standard system. They would also likely terminate our delegation agreement for the issuance of waste discharge permits under Federal law resulting in the need for two permits for each facility discharging wastes to state waters.

The proposed amendments would delete this section to eliminate the risks of federal assumption of these programs but would incorporate, in a different section, legislatively mandated risk levels for human carcinogens. The proposed levels are one excess case of cancer per 10,000 (10-4) people for all carcinogens except arsenic where the risk level would be one excess case per 1,000 people (or 10-6) or about 18 parts per billion. The arsenic limit for drinking water is 50 parts per billion or a risk level of about one excess case per 750 people.

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The risk level in our present standards is one excess case per million people (10-6) and is the risk level adopted by about one half of the states. The remaining states have adopted a risk level of one in one hundred thousand people (10-5). For comparative purposes the risk of death due to; a motor vehicle accident is 1 in 65, falls 1 in 186, and for home accidents it is 1 in 130 people.

Section 2 also contains a requirement that standards for metals be based on the dissolved method of analyses. Although use of the dissolved method of analyses for standards has been approved in some states we must oppose this change for the following reasons:

- ♦ all of our current standards were developed using total recoverable methods of analyses.

- ♦ Although the EPA will accept standards based on the dissolved method of analyses EPA requires that discharge limits for permits be based on the total recoverable method of analyses. Thus, instream compliance monitoring would require both types of analyses.

- ♦ The dissolved method of analysis requires filtering the samples in the field. Such filtering is very difficult in freezing weather and is much more expensive and prone to error than is the total recoverable method.

- ♦ The dissolved method of analyses does not measure all of the pollutants present. We would like to provide a quick demonstration that illustrates our concern.

- ● Most of the water quality data that exists in the data files is based on the total recoverable method and this data will not be comparable to new data based on the dissolved method.

Section 3 provides that the board shall adopt site specific standards. While this is a good concept, we are concerned that site specific standards reflect the impact of all routes of exposure to contaminants. There are cases where significant toxicity may be caused by fish ingesting contaminated sediment or bugs.

Section 4 proposes to modify a number of definitions. The proposed change in the definition of "Degradation" would require a complete revision of the nondegradation rules.

The proposed amendments to this definition will require relatively minor changes to the rules.

The proposed changes in the definitions of "Industrial" and "Other wastes" would remove the permitting requirements for these structures.

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The proposed amendments delete these changes.

The proposed change to the definition of "State Waters" is not compatible with the fact that all waters belong to all of the people and that these waters deserve protection under the provisions of the water quality act.

The proposed amendments provide that ponds or lagoons used solely for treating, transporting or impounding pollutants are not state waters and is acceptable to the Department.

Section 5 requires coordination of our permitting process with that of other state agencies. While we now attempt to coordinate those functions, we welcome the specific legislative directive.

Section 7 directs us to establish a classification for intermittent or ephemeral streams and we agree with this need. The proposed amendment would be of value to the Department. We are, however, concerned with the proposed changes to 75-5-301(2) which require that standards be "cost-effective and economically and technologically feasible". While this condition is appropriate for establishment of treatment standards, it is inappropriate for water quality standards. Water quality standards must be set at levels that are protective of the beneficial uses. The language as proposed would result in federal promulgation of standards for Montana.

The proposed amendments would delete this change.

The proposed changes requiring that nitrate concentrations in ground water of less than 10 milligrams per liter be nonsignificant would completely negate the nondegradation concept for ground water and would significantly reduce the protection of the ground water.

The proposed amendments would result in considerable protection for ground water and would significantly reduce the burdens on the department and the regulated public.

Section 8 requires all known misclassified waters be reclassified in a timely manner. Due to the list of known misclassified streams, this effort would require significant additional resources.

The proposed amendments would provide the Department with more flexibility and reduce the resource demand.

Section 11 proposes changes to the definition of "natural" in 75-5-306 would conflict with common sense and federal requirements in that it would provide that the conditions of waters which were receiving raw sewage in 1971 would be considered natural.

The proposed amendments delete this change.

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Section 13 establishes a new requirement that all permits be reviewed for completeness within 30 days and that the first review must include all issues. While it is appropriate to demand reasonable and timely response to submittals, the current language is not practical. Complying with this requirement would require additional resources beyond what we have requested through the budget process.

The proposed amendments extend this time to 60 days and applies to only new permits, and somewhat limits the requirement that the first review include all issues.

Section 15 modifies the current provisions for holding a contested case hearing and would require that a contested case be held in the county of the violation unless the alleged violator wanted the case to be heard in Lewis and Clark County. This change would require extensive board travel and increased expense.

The proposed amendments remove this requirement.

Section 16 includes a proposed requirement that civil actions take place in the count of the violation. Such a limitation will increase staff travel and per diem expenses.

No amendment has been proposed to address our concern.

Hopefully my comments have pointed our clearly the effort that has gone into our discussions with industry on this bill. While a couple of areas of disagreement still exist, we have made substantial progress on this bill and we ask for your support of the amendments that have been offered and of those offered by the Department.

DATE 2-13-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 330, HB 331, SB 362, SB 346

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Name	Representing	Bill No.	Check One: Support	Oppose
Deborah Smith	Sierra Club	all, qualified 371		346, 330, 331, 362
Richard Parks	NPRC	All		
Allan Rollo	MWF	All	371	✓
Jim Barrett	Beaverhead Alliance			✓
DONALD KEEN	SELF	ALL		X
Joe Gutkoski Pres.	Madison Gallatin Alliance	All		✓
MIKE MURPHY	MT. WATER RES. ASSN	330 331 362 371	✓	
Scott McMillion	Bozeman Chronicle	all		
Lorna Frank	MT. Farm Bureau	all	✓	
[illegible]	SELF	ALL		
CANDACE TORGERSON	MT. Cattlewomen	ALL	X	
Raymond Lazuk	Golden Sunlight Mine	All	X	
[illegible]	NPRC	346	X	
Alan Joscelyn	Golden Sunlight Mines	330 331	X	

VISITOR REGISTER

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DATE 2/13

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: 330-331 362
346

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Doug Parker	Crown Butte Mines	330 331	X	
Bob Wilkins	Mt Mine Assn	330-331	✓	
Hope Stevens	Citizen	330-331	L	X
Laurie Cano	Citizen	346 330-331	✓	✓
Florence Ore	NPRC	330, 331		X
Steve Pilcher	DHES	330-331		X
Robin Cunningham	Fishing Outfitters Assn of Montana	330-331		X
Gail Abercrombie	MT Petroleum Assn	331 362	X	
Larry Brown	Ag Pres. Assn 371	331 346 330 362	X	
Dennis Iverson	NMOGA	362	✓	
Don Allen	MT Wood Products Assn	330 331 371	✓	
Peggy Trenk	WETA	371	✓	
Russ Ritter	MT Resources	331 362	✓	
John Bloomquist	Mt. Stockgrowers	330, 331, 362, 371	✓	

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DATE 2-13-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 330, SB 331, SB-362
SB 346

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Nick Golder	NPRC	SB 330 SB 331		✓
GARY FORRESTER	SD #8	346	✓	
COLLIN BANGS	REALTORS	331		
Jim Mockler	MT. Coal Council	SS 330	✓	
Tamara J. Johnson	CURE	SB 330 SB 331	✓ ✓	
Al Kyngston	Self	SB 330 331	✓	
Joe Cossi	SELF	SB 330 331	✓	
Bruce Farling	Montana Trout Unlimited	SB 330 SB 331		✓
Willa Hall	LWV	SB 330 SB 331		✓
R F LABBE	City of DEER Lodge	SB 331	✓	
MEBER	Hydrometrics	SB 330 SB 331		✓
WANDY WASH	ARCO	SB 330 SB 331	✓	
[illegible]	[illegible]	SB 330 SB 331	✓	
Susan Cullaghan	Montana Power	SB 330 SB 331	X	

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DATE 2/13/95

SENATE COMMITTEE ON Nat. Resources

BILLS BEING HEARD TODAY: 330, 331, 362, 331
SB 346

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
MARSHALL PRICE	ENTERPRISE RENT-A-CAR			
Robert Ward	Enterprise Rent-a-Car			
JACK MORGENSTERN	MT CONTR ASSOC			
CURT LANCE	HELENA CHRYSLER-NISSAN			
MARY DYE	MDT			
Ken Knapp	MRAN			
Dick Juntunen	Santa Fe Pacific Gold.		346, 330 331, 362 371	
Hope Stevens				
Ron A Andersen				
JOHN A. KRUTAR				X
Brian Kuehl	Greater Yellowstone Coal.			X
[illegible]	MMTC 371	330, 331 362, 346		X
[illegible]	Selt			X
Andrea Stander	NPRC			X

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DATE 2-13-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 320, SB 331, SB-362
SB-346

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Youngberg	MT Farm Bureau	362 372	4	
Janet Ellis	MT Audubon	362 346		X
Brian Kuehl	Greater Yellowstone Coal.			X
JOHN ARRIGO	DHES	SB362	X	
John Fitzpatrick	Pegasus Gold	SB362 SB371 ~~SB330~~ SB 331	X	

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DATE 2-13-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB-330, SB 331, SB 362
SB 346

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Russ Ritter	MT Resources	330 331	X	
John Youngberg	Montana Farm Bureau	330 331	X	
Chris Tweeten	MT Dept of Justice	331		X
Melissa Tremmel, R.S.	Broadwater County Jefferson County	330 331	X	
Larry Brown	Ag Pres. Assoc.	330 346 331	X	
Bob Robinson	DNRC	330 + 331		X
~~Pat~~ Janet Ellis	MT Audubon	330 > 331		X
Peggy Trenn	WETA	330 + 331	X	

VISITOR REGISTER

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MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on February 18, 1995, at 7:00 AM

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. William S. Crismore (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Jeff Weldon (D)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Michael Kakuk, Environmental Quality Council
Theda Rossberg, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 415
Executive Action:	SB 247, SB 252, SB 330, SB 331, SB 344, SB 346, SB 362, SB 371, SB 391, SB 415,

{Tape: 1; Side: A; Comments: Chairman Grosfield relinquished the Chair to Vice Chairman Larry Tveit to present SB 415.}

HEARING ON SB 415

Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, SD #13, Big Timber, said SB 415 is the bill requested by the committee that attempts to set up a fund that would allow private parties to contribute donations in order to take care of specific environmental problems. He said on Line 2, Pages 10-11 says: "...private parties are not liable under 75-10-715 solely as a result of their contribution to this account..."

If there were not enough funds contributed to remedy the problem within one year, then all the funds plus interest would be returned to the grantor. If the funds were sufficient the department would give that site high priority for remedial action, using the donated funds.

He said SB 415 was a rush job, in order to get it drafted in time to meet transmittal, and may need some improvements.

Proponents' Testimony:

Florence Orr, Concerned Citizen of Pony, said they very much appreciate the concern that the committee has shown for their problem. They also appreciate the offer from the Montana Mining Association to help remedy the cyanide problem caused by previous mining in the Pony area.

She asked if in Section 7(c) where it says: "...if there are not sufficient funds to remediate the facility within 1 year, the funds will be returned to the donors...", that meant that if after 1 year, and they were $20 short, they would have to start all over, and if the Zimmermans at Pony would be provided with bottled water in the mean time.

She thanked the committee members and **SEN. GROSFIELD** for their efforts to help the situation in Pony.

Jim Jensen, Executive Director, Montana Environmental Information Center, said they would like to work with the committee and **SEN. GROSFIELD** to come up with some language to allow the Montana Mining Association to help the Great American Gold Company to remedy the problem without encumbering the DHES.

Bob Robinson, Director, Department of Health and Environmental Sciences, said they support the effort of the committee to try to remedy the Pony situation. From the perspective of the department there may be a situation for conflict. He suggested that they leave the responsibility of whether or not to return donated funds up to the department. He said they would work with the grantor and stay in touch with them. If there were two

entities trying to make a decision it could cause conflict and disagreement. The department would make sure that the standards that were in 75-10-721 were followed.

Mr. Robinson suggested that a new section (f) be added that says: "the department shall regularly report to the EQC or the Legislative Finance Committee on the financial status of income into the special revenue account and the results of any analysis or activity related to the specific project." He supported SB 415 with that proposed amendment.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. MIKE FOSTER, asked **Mr. Robinson** if everything was tied to the DHES, wouldn't that leat to a problem of the cost associated with developing the standards, etc. **Mr. Robinson** said the whole bill affects the department, and he was trying to eliminate a possible conflict between the department and the grantor. If they cannot agree that the remediation is appropriate, they end up with a conflict. They would have to do some remediation analysis, and maybe work with the new owners of the facility to see if they were willing to put together a remedial investigative analysis.

SEN. GROSFIELD said he thought that the department made a good point. He said he also had a concern about the language on Line 14. On Lines 10-11 that says: "... private parties not liable", and on Line 14 it says: "as determined by the department and the grantor." He wasn't sure whether or not that language could raise a liability concern to the grantor, which was what they were trying to avoid. Therefore, perhaps the department should be the one to make that determination.

SEN. JEFF WELDON said he would like to see some fund raising. There were some people from the Mining Association present and he wondered if there were any pledges.

SEN. VIVIAN BROOKE said she had the same concern as **Ms. Orr** that if the funds were not sufficient, what would happen? She suggested adding some language that says: "some cleanup is better than none."

Mr. Robinson responded that when there is a remediation or construction problem to be done, there is an estimate of the cost. He said when they receive an estimate of what it might cost, that would be their target. If that target is fairly close, the decision would be made to finish the project. If the project is 85% to 90% completed, it shouldn't be too difficult to solicit the rest of the funds to finish that cleanup.

SEN. BROOKE asked **Mr. Robinson** if he thought that subsection (c) would limit their ability to go forward because of the one year time limit from the date of initial contribution. **Mr. Robinson** said the timeframe does, but a better way would probably be to have people make pledges and have the funds all lined up. When they had the remedial investigation finished, they would ask for the pledges. The timing and coordination could be worked out.

SEN. WILLIAM CRISMOrr said some people may be in a position to volunteer their services rather than to give monetary donations. Something to be considered was, if an industry donates $100,000, they want to know how that would be used. The people who donate funds should have a say in what would be done.

SEN. B. F. "CHRIS" CHRISTIAENS said he didn't think anyone could know the cost would be until they actually got into the reclamation project. Perhaps the project could be started and donations could still be received. He said the Department of Fish, Wildlife, and Parks have a specific fund set up for that kind of problem.

SEN. TOM KEATING said he agreed with **SEN. CRISMOrr** that there should be some provision for inkind or voluntary services. There was no provision in the bill for that kind of an allowance. Someone with time, equipment, and the expertise could hurry the process along. He asked **John Arrigo, DHES**, if there was a way the cyanide pond at Pony could be drained.

Mr. Arrigo said the impoundment at Pony had two plastic liners under it, and it was about one-quarter full of tailings and water, some of which was precipitation. There are two general options for cleanup: 1) neutralize the tailings and cyanide in place, pump out the water and fold the liner and bury the site, or 2) remove the tailings and dispose of them in another location, and remove the liner and regrade the site. **SEN. KEATING** asked if there were monitoring wells around the area. **Mr. Arrigo** replied there were monitoring wells in the area, but they have not been monitored for 2 years. They only monitor domestic wells around the impoundment.

SEN. KEATING asked if the wells they had monitored were health threatening. **Mr. Arrigo** replied that the level of solution between the two liners was 50 parts per million. The levels of cyanide in **Mr. Zimmerman's** well was .17 parts per million. However, there was some question about that because there may have been some cross-contamination. At any rate, the proposed maximum level was .2 parts per million and .17 was close enough to be health threatening.

SEN. CHRISTIAENS asked **Mr. Robinson** about donated equipment and help. He replied that there would have to be some cooperative efforts in recognizing that someone may want to donate equipment or an operator for some inkind contribution. If the department

was given the lead they could figure out a way to subcontract with someone so they would not expose the grantor to liability.

SEN. FOSTER asked how much money would the department need to conduct a remedial investigation study. **Mr. Arrigo** replied that it would be a guess, but probably tens of thousands of dollars. It would depend upon whether or not they bury the problem or remove it. Removal would require a much higher cost.

SEN. TVEIT asked **Mr. Arrigo** if that site was on state land and how large it was. He thought it was private land and was not over 5 acres. The impoundment holds about 20,000 tons of tailings. **SEN. TVEIT** asked if there was any sign of vandalism on the liners. **Mr. Arrigo** responded that he had heard that someone was throwing sharp objects into the impoundment that caused the liners to leak. They do not know exactly where the leak was or what actually caused it. **SEN. TVEIT** asked how far the well was from the site that had the cyanide in it. **Mr. Arrigo** said they detected cyanide in a spring about 100 feet below the nob of the site and the domestic wells were near the base of the nob, but go down deeper. He said they may be able to neutralize and bury the contaminated site.

SEN. BROOKE asked if there was a lesson there, and if that could be avoided in the future. **Mr. Arrigo** said the problem was enforcement. If they had monitored the company 2 years ago they may have avoided the situation.

SEN. KEATING said if they agree on language changes and pass the bill, who will make the decision on whether or not to remove the tailings. **Mr. Arrigo** said they would do a feasibility study and decide how to clean up the site. However, the decision would be between the department and the grantor.

Closing by Sponsor:

SEN. GROSFIELD said the bill was a reasonable start for the cleanup at Pony. There needs to be some work done on the language from the liability, expense, and inkind services perspective. He was concerned about the question of how and when the decision would be made and how much of the funds would be spent on that process. He hoped there could be some amendments that would address the concerns stated.

{Comments: CHAIRMAN GROSFIELD RESUMED THE CHAIR.}

EXECUTIVE ACTION ON SB 344

Motion: SEN. TVEIT MOVED TO AMEND SB 344.

Discussion: **SEN. TVEIT** asked **Tom Daubert** to explain the amendment.

Tom Daubert, Ash Grove Cement Company, said the bill increases an existing tax on waste that might go for nonenergy recovery. Instead of increasing the tax from $8 per ton to $16 per ton, the amendment would increase it to $10 per ton. Montana currently has an $8 per ton tax on hazardous waste for energy recovery, and $10 per ton for waste that doesn't produce any beneficial use. **SEN. TVEIT** said both of the fees go to the DHES for managing waste facilities.

SEN. KEATING asked if there were any facilities in the state that currently burn hazardous waste. **Mr. Daubert** said the vast majority of the waste is shipped out of state. **SEN. KEATING** said the department already has enough revenue from the $8 per ton fee.

CHAIR. GROSFIELD said he didn't think that the people that were shipping the waste out of state were paying the tax. It only applies to regulated land fills, which would be instate. He said one person's tax break is always another person's tax bill.

{Tape: 1; Side: B}

Motion/Vote: **MOTION TO APPROVE AMENDMENT TO SB 344 CARRIED 6-5 ON A ROLL CALL VOTE.**

Motion: **SEN. TVEIT MOVE TO DO PASS SB 344 AS AMENDED.**

Discussion:

SEN. WELDON said SB 344 is a do-nothing bill and was based upon a false premise. If hazardous waste is generated, the tax will be the same as in current law.

Substitute Motion/Vote: **SEN. WELDON MOVED TO TABLE SB 344. MOTION CARRIED 7-4 WITH A ROLL CALL VOTE.**

EXECUTIVE ACTION ON SB 371

Motion: **SEN. FOSTER MOVED TO ADOPT AMENDMENT NO. sb037101.ate AS CONTAINED IN EXHIBIT 1.**

CHAIR. GROSFIELD explained the amendments to the committee members. The bill clarifies the waters in national parks and wilderness areas. There was some confusion about "areas" in the hearing. The Water Resources Association was concerned about the maintenance, repair, or replacement of existing structures on dams, diversions, etc. There was a concern about a number of

irrigation facilities within wilderness areas, and the amendment would clarify that.

SEN. COLE said there were still some question about water going into a national park or wilderness area. **CHAIR. GROSFIELD** said the amendment addresses water totally within the boundaries. There were very few waters actually flowing into the national parks or wilderness areas that currently exist in Montana. Most of the waters flowing into Yellowstone National Park were coming from wilderness areas. The water coming out of Old Faithful would probably be considered polluted by nature.

SEN. BROOKE said that with the amendments the boundary waters of Glacier National Park would not be classified as Outstanding Resource Waters, so they would have to be classified by the Board, is that right? **CHAIR. GROSFIELD** said that was correct.

SEN. WELDON asked **CHAIR. GROSFIELD** as to what he envisioned as "short term" changes in existing water quality. **CHAIR. GROSFIELD** responded that there was a provision in the bill that addresses "short term" changes. For example, if maintenance had to be done on a dam or something similar, "short term" would cover that activity.

Steven Pilcher, Water Quality Division, said that "short term" does have a specific meaning. Section 75-5-308 of the Water Quality Act provides for an opportunity to recognize that certain essential activities would have some adverse effect on water quality standards, but would result in a "short term" violation of those standards. The "short term" as defined in the surface water standards allows the department to review an activity and impose conditions that would limit the extent of the disturbance and the length of time. An example would be that in order to put in new pilings for a bridge, they have to get into the stream to accomplish that work. Through the permit review process they would have to do that according to the department's guidance.

VOTE: MOTION TO DO PASS AMENDMENTS NO. sb037101.ate AS CONTAINED IN EXHIBIT 1, CARRIED UNANIMOUSLY.

Motion: SEN. WELDON MOVED TO DO PASS AMENDMENT NO. sb037102.ate AS CONTAINED IN EXHIBIT 2.

SEN. WELDON explained the amendment to the committee members.

CHAIR. GROSFIELD said he would oppose the amendment because it would likely become a "Catch 22." He was trying to avoid the situation where there was a project in an area and people who may not like the project look for tools to try to subvert or otherwise frustrate the project. He said he didn't want the bill to be used as that kind of a tool. He felt that the bill, without this amendment, would better serve as an incentive for people interested in getting waters designated for Outstanding Resource Waters.

SEN. BROOKE said she had trouble with the section that says "subject to Legislative approval", because the Legislature won't always be in session when those situations come up. **CHAIR. GROSFIELD** said the bill contemplates Legislative approval of every Outstanding Resource Water designation, because this designation dramatically limits activities on a stream, and he felt the Legislature should be diredtly involved. That is an important policy question when it comes to shutting down a certain stream.

SEN. BROOKE asked what happens to those waters in between the time when the board approves an Outstanding Resource Water. **CHAIR. GROSFIELD** said they wait.

SEN. WELDON asked **CHAIR. GROSFIELD** if he would consider removing Line 18, because if a board had positively acted on an application to designate an ORW and concluded that the water should be designated, the water could not be effectively designated because legislative approval was necessary. He asked if the board would postpone a decision pending legislative action.

CHAIR. GROSFIELD said it was important to keep that in the bill. Removing Line 18 would subvert the purpose.

SEN. WELDON asked if **CHAIR. GROSFIELD** believed removing Line 18 would be detrimental to Lines 12-13. He said if **CHAIR. GROSFIELD** would agree ti strike Line 18 he would modify his amendment. **CHAIR. GROSFIELD** responded that he would still resist that. He said, suppose the board decides to designate and then the board denies a permit, and then the Legislature says no, they don't think that should be designated as an ORW after all. It is a "catch 22" situation that he would want to resolve in one way and **SEN. WELDON** wants to resolve in another way.

Vote: MOTION TO APPROVE THE AMENDMENT AS CONTAINED IN EXHIBIT 2, FAILED WITH SEN. BROOKE AND SEN. WELDON VOTING YES.

Motion: SEN. FOSTER MOVED AMENDMENT NO. sb037105.ate AS CONTAINED IN EXHIBIT 3.

SEN. FOSTER said the amendments clarify nondegradation of waters. **CHAIR. GROSFIELD** asked the significance of "initiated after April 29, 1993." **SEN. FOSTER** said that was the effective date in SB 401.

SEN. BROOKE asked **Mr. Pilcher** if he would respond to the amendments. **Mr. Pilcher** said nondegradation applies to new sources of pollution. It seems to be further clarification of that language.

Vote: MOTION TO APPROVE AMENDMENT CONTAINED IN EXHIBIT 3 PASSED WITH SEN. WELDON VOTING NO.

Motion: CHAIR. GROSFIELD MOVED AMENDMENT NO. sb037102.02.amc AS CONTAINED IN EXHIBIT 4.

CHAIR. GROSFIELD said they were technical amendments. **Todd Everts, Environmental Quality Council,** explained the amendments to the committee members.

Vote: MOTION TO APPROVE AMENDMENTS AS CONTAINED IN EXHIBIT 4, CARRIED UNANIMOUSLY.

Motion: SEN. BROOKE MOVED FROM AMENDMENT NO. sb037101.amc, AMENDMENTS 1, 4, 5 AND 6, AS CONTAINED IN EXHIBIT 5.

SEN. BROOKE explained the proposed amendments to the committee members.

CHAIR. GROSFIELD said he would have to oppose the amendments. Concerning amendment No. 1, they were only addressing surface waters. The federal EPA rules do not cover groundwater at all in Outstanding Resource Waters. Subsection (b) of the definition does refer to groundwater so in some circumstances, groundwater could be designated by the Board as an ORW. The concern with parks and wilderness areas was groundwater may mean water 2 inches below the surface or water 10,000 feet below the surface. There was a mine that was actually drilling beneath a wilderness area with no surface activities of any kind, and he didn't want this bill to be used to prohibit that kind of project. He said in drafting the bill he met with a number of people and different agencies concerning the bill, and they were only concerned with surface water.

CHAIR. GROSFIELD said pages 9 and 10 regarding nonsignificant activities were taken nearly verbatim from the rules adopted by the Board of Health as part of their nondegradation rules. Most of them involve compliance with other permitting authority on the statutes. For example (l), (m), and (n) say: "...in accordance with Title 82, Chapter 2, or in accordance with Title 75, Chapter 10..." Those sections of law have a rigorous permitting process that they go through that involves consideration of water quality.

Vote: MOTION TO APPROVE AMENDMENTS 1,4,5 AND 6, AS CONTAINED IN EXHIBIT 5, FAILED 7-4 WITH SEN. BROOKE, SEN. CHRISTIAENS, SEN. WELDON, AND SEN. WILSON VOTING YES.

Motion: SEN. FOSTER MOVED TO ADOPT AMENDMENT NO. sb037104.ate AS CONTAINED IN EXHIBIT 6.

SEN. FOSTER explained the amendment to the committee members. He said that during the hearing **Mr. Fitzpatrick** pointed out that mining had inadvertently been left out of the bill in the lists on Pages 9-10. The amendment adds mining to the list.

CHAIR. GROSFIELD asked if that was in the list of nonsignificant activities in the board rules. **Mr. Arrigo** said hard rock mineral exploration was specifically not included in the nonsignificant category when the rules were promulgated, but coal and uranium were included. The reason was that the state exploration requirements do not specifically identify what materials can or cannot be used for drilling fluids. In hard rock exploration drilling, motor oil is sometimes use as a lubricant and that could lead to a significant change in water quality and should not be excluded. **CHAIR. GROSFIELD** said he thought the board could eliminate the use of motor oil by rule.

Mr. Arrigo said the DSL would have to tighten up their exploration regulations and then the board could add another category to the rules.

SEN. FOSTER asked **Mr. Arrigo** why water well drilling was included as a nonsignificant activity. He responded that when drilling for water wells, great pains are taken to make sure that the chemicals were extracted. Whereas, in hard rock exploration they were only after a rock sample, not a water quality sample. Bentonite is the most common drilling fluid used in sealing water well drilling holes to prevent water from moving out and water moving in, and it was not as toxic as the other lubricants used in hard rock exploration where they use kind of a slurry bentonite.

{Tape: 2; Side: A}

CHAIR. GROSFIELD said the bill did not restrict the board from rule-making to identify nonsignificant activities. If the natural resource agency reorganization bill, SB 234, passes, they would be dealing with the same board that would tighten up some of the drilling procedures. He said he wasn't comfortable adding **SEN. FOSTER'S** amendment to the bill at this time.

SEN. COLE asked **CHAIR. GROSFIELD** what would happen if the amendment was added at this time. He answered that they would be dealing with a different section of law. The hard rock mining section of law was not addressed in this bill.

SEN. FOSTER said in looking at the list there is coal, uranium, oil and gas drilling, hazardous waste management. How can one be more significant than the other? Therefore, he thought the amendment should be in the bill to address metallic and nonmetallic minerals.

Vote: MOTION TO APPROVE THE AMENDMENT AS CONTAINED IN EXHIBIT 6, CARRIED 6-5 ON A ROLL CALL VOTE.

Motion: CHAIR. GROSFIELD MOVED TO DO PASS SB 371 AS AMENDED.

Discussion: SEN. BROOKE said she had trouble with Legislature approval language and thought that the timeline for designation

was bulky in its mechanism. She didn't see how Legislature approval would work without having annual sessions. Other than that, the bill had some very good qualities.

Vote: **MOTION TO APPROVE SB 371 AS AMENDED, CARRIED 9-2 WITH SEN. TVEIT AND SEN. CHRISTIAENS VOTING NO.**

EXECUTIVE ACTION ON SB 415

Discussion: Before the committee adjourned to the floor, **CHAIR. GROSFIELD** instructed **Mr. Everts** to redraft SB 415 to meet the concerns of the committee.

SEN. KEATING suggested that there be language in the bill giving the department some sort of control of the project and language to allow inkind contributions.

SEN. MILLER said there should be co-participation, in which 50% of a pledge could be inkind services.

SEN. CHRISTIAENS said they may wish to look at how Fish, Wildlife, and Parks handle their donations.

CHAIR. GROSFIELD mentioned to **Mr. Everts** that he didn't want all of the donations spent on studies.

{Comments: meeting recessed at 9:00 AM and reconvened at 1:45 PM.}

EXECUTIVE ACTION ON SB 346

Motion: **CHAIR. GROSFIELD MOVED TO ADOPT SEN. FOSTER'S AMENDMENTS NO. sb034601.ate AS CONTAINED IN EXHIBIT 7.**

Discussion:

CHAIR. GROSFIELD reviewed the amendments with the committee members. He said the amendments would provide some clarification to the bill. There were no significant changes with the amendments. In reviewing the amendments with the DHES, they were agreeable to the changes.

Vote: **CHAIR. GROSFIELD announced that the vote would be left open until more committee members were present.**

Motion: **SEN. CHRISTIAENS MOVED TO ADOPT SEN. BROOKE'S AMENDMENTS NO. sb034602.ate AS CONTAINED IN EXHIBIT 8.**

Discussion:

SEN. CHRISTIAENS reviewed the amendments with the committee members.

CHAIR. GROSFIELD said item 3. of **SEN. BROOKE'S** amendment should read "Page 3" instead of "Page 2."

SEN. FOSTER asked what "widespread economic and social impact" meant. **Mr. Everts** said he just received the amendment and he wasn't sure what **SEN. BROOKE'S** intentions were.

CHAIR. GROSFIELD asked **Brian Kuehl,** who he believed had helped with **SEN. BROOKE'S** amendments, to respond.

Brian Kuehl, Greater Yellowstone Coalition, explained that under the Federal Clean Water Act, water quality standards can be lowered, but only in 6 specified circumstances that were listed in the Code of Federal Regulations. If a state attempts to lower water quality standards other than in those 6 circumstances, the EPA would be forced to veto that lowering of standards. If the state adopts a rule that violates that provision, the EPA may also try to undo that rule. The language in the amendment is verbatim from the Code of Federal Regulations for the two human-caused types of pollution. Water standards can be lowered only for natural causes.

SEN. CHRISTIAENS asked if the amendments were not adopted, would they end up with a primacy issue. **Mr. Kuehl** said he furnished **SEN. BROOKE** with a copy of the Codes of Federal Regulation provisions, and a letter from the EPA Office of General Counsel stating that the 6 criteria had to be incorporated whenever water quality standards were lowered.

CHAIR. GROSFIELD asked **Mr. Pilcher** to address the situation. **Mr. Pilcher** pointed out that they were not lowering the classifications. The bill deals with those stream segments where the water quality is already limited. EPA does allow variances in water quality standards. He said that the temporary approach that was suggested was workable and would not lower water quality standards. The language in the amendment doesn't significantly change how the bill would be implemented.

CHAIR. GROSFIELD asked **Dr. Horpestad** if he had talked with the EPA about the bill as introduced. **Dr. Horpestad, Technical Studies and Support Section Supervisor, Water Quality Division, DHES,** replied he had discussed the bill as written with EPA, and sees no major problems. Adding the language proposed in the amendment may be acceptable, but he would feel more comfortable if the language was not added.

Vote: MOTION TO APPROVE SEN. BROOKE'S AMENDMENTS CONTAINED IN EXHIBIT 8, FAILED.

Vote: MOTION TO APPROVE SEN. FOSTER'S AMENDMENTS AS CONTAINED IN EXHIBIT 7, PASSED.

Motion/Vote: SEN. WELDON MOVED TO DO PASS SB 346 AS AMENDED. MOTION CARRIED 6-1, WITH SEN. CHRISTIAENS VOTING NO.

EXECUTIVE ACTION ON SB 252

Motion: SEN. TVEIT MOVED TO ADOPT AMENDMENTS NO. sb025201.ate AS CONTAINED IN EXHIBIT 9.

Mr. Everts explained the amendments to the committee members.

Discussion: SEN. WELDON said he had a question with the amendments as they relate to the title of the bill. In the amendments there was no mention of natural attenuation zones.

Mr. Everts said that was correct. However, one could make the argument that it was reasonably germane to the original title.

SEN. WELDON said he takes issue with the method that was taken to amend the bill.

Motion: SEN. WELDON MOVED TO TABLE SB 252.

Discussion: SEN. TVEIT said the title does conform to the bill.

Vote: MOTION TO TABLE SB 252 FAILED 6-1 BY ROLL CALL VOTE.

Mr. Everts explained amendments no. sb025201.ate in the new grey bill.

Vote: MOTION TO ADOPT AMENDMENTS NO. SB025201.ate AS CONTAINED IN EXHIBIT 9, CARRIED 6-1, WITH SEN. WELDON VOTING NO.

Motion: SEN. FOSTER MOVED TO ADOPT AMENDMENTS NO. sb025202.ate AS CONTAINED IN EXHIBIT 10.

CHAIR. GROSFIELD explained the amendments to the committee members. He said the amendment no. sb025202.ate amends amendment no. sb025201.ate. The new language to be inserted after discharger was "...at the time the permit was issued..."

SEN. WELDON said then in effect the land area at the time the permit was issued would be the maximum pollution zone. If a company acquires land beyond that, the mixing zone does not expand with the land acquisition, is that correct? **CHAIR. GROSFIELD** replied that was correct.

Vote: MOTION TO ADOPT AMENDMENTS AS CONTAINED IN EXHIBIT 10, CARRIED UNANIMOUSLY.

Motion: SEN. TVEIT MOVED TO DO PASS SB 252 AS AMENDED.

Discussion: **SEN. WELDON** said he had trouble with the fact that the original land owned had to be the pollution zone. He didn't think that was functional and he protested the bill.

Vote: MOTION TO DO PASS SB 252 AS AMENDED, CARRIED 6-5 BY ROLL CALL VOTE. (At the time of the vote, some Committee members were out of the room. SEN. KEATING cast a "yes" vote later and SEN. BROOKE and SEN. WILSON cast a "no" vote later. They were included in the final roll call vote)

EXECUTIVE ACTION ON SB 362

Motion: CHAIR. GROSFIELD MOVED TO ADOPT AMENDMENT NO. sb036201.ate AS CONTAINED IN EXHIBIT 11.

Discussion: **CHAIR. GROSFIELD** said the sb036201.ate was a technical amendment to correct a drafting error in the bill.

Vote: MOTION TO ADOPT THE AMENDMENT AS CONTAINED IN EXHIBIT 11, CARRIED UNANIMOUSLY.

Motion: SEN. TVEIT MOVED TO ADOPT AMENDMENT NO. sb036206.ate AS CONTAINED IN EXHIBIT 12.

Discussion: **SEN. TVEIT** explained the amendment to the committee members.

Vote: MOTION TO ADOPT THE AMENDMENT AS CONTAINED IN EXHIBIT 12, CARRIED UNANIMOUSLY.

Motion: SEN. WELDON MOVED TO ADOPT AMENDMENTS NO. sb036201.amk AS CONTAINED IN EXHIBIT 13.

Discussion: **SEN. WELDON** said the amendments were offered on behalf of the DHES, and he asked **Mr. Pilcher** to explain.

Mr. Pilcher explained amendment no. 2. He said they were trying to avoid any future conflict with an individual being granted a mixing zone for groundwater. Their concern was that they might later find that the activity was also influencing surface water (because it was actually hydroligically connected), and it could therefore require a surface water discharge permit. The amendment would provide some clarification for that situation.

SEN. WELDON said he would like to exclude amendment no. 4 from his motion, because that was the same amendment that **SEN. TVEIT** introduced. He said amendment no. 5 would be adding a new section if the bill passes.

Mr. Pilcher said they probably would not be in a position to permit all of the facilities that had been previously excluded. However, they would like to obtain the ability to permit as necessary, facilities that do not have an ongoing review by another agency. Those would include the underground injection

control wells, with the exception of Class 2, which are the oil and gas injection wells. He said they would like to retain permit authority for the waste water treatment facilities that are reviewed by the department.

CHAIR. GROSFIELD said that he recalled in a number of different issues, the phrase "hydrologically connected", especially with the compact that he helped develope with the National Park Service concerning geothermal waters.

{Tape: 2; Side: B}

Michael Kakuk, Environmental Quality Council, said that phrase appears in several statutes. It appeared in the basin closures as well as the compact and a number of other places in the Water Use Act. One statute says "directly connected", another one says "immediately connected", and another says "immediately and substantially connected."

Substitute Motion: SEN. TVEIT MADE A SUBSTITUTE MOTION TO SEGREGATE OUT AMENDMENT NO. 2 OF THE AMENDMENTS, AND VOTE ON NO'S 1,3, and 5.

Discussion: SEN. TVEIT explained why they should be voted upon separately. Since all the groundwaters are, to some degree, hydrologically connected to surface waters, that would gut the bill. In proposing the amendments, DHES was trying to accommodate EPA's position that a surface water discharge permit was required for any discharge to groundwater that was hydrologically connected to the surface waters. EPA's position was not based upon any federal statute or rule, because the Federal Clean Water Act does not apply to groundwater. The EPA was trying to make the Federal Clean Water Act cover groundwater by administrative act. While Congress says it doesn't cover groundwater, EPA has had some success in getting some federal courts to buy their position. The situation was different in Montana because there was a water quality statute that applies to groundwater.

SEN. TVEIT said if they want to have a separate groundwater regulation program with separate permit requirements and provisions, amendment no. 2 should be rejected.

Vote: MOTION TO ADOPT, FROM AMENDMENTS NO. sb036201.amk, AMENDMENTS 1, 3, and 5, CARRIED UNANIMOUSLY.

SEN. WELDON asked **Mr. Pilcher** if he would respond to **SEN.TVEIT'S** explanation of Amendment no. 2. He responded that in Montana, state waters were defined in the Montana Quality Water Act as both surface and groundwater, and they need to be concerned about protecting both. They recognize the concern that **SEN. TVEIT** had raised, that groundwaters were all in some manner, connected to surface waters.

CHAIR. GROSFIELD asked **Mr. Pilcher** to visit briefly with **Mr. Everts** and **Mr. Kakuk** to see if they could come up with some language to clarify that amendment to take care of the concern. **Mr. Pilcher** reported that language could be inserted that said "that do not have a direct hydrological connection."

Amended Motion: **SEN. WELDON** amdended his motion to include **Mr. Pilcher's** suggested language in the last sentence in Amendment no. 2.

SEN. TVEIT said oil wells and drilling have a strict set of regulations through the Oil and Gas Commission, and now the Health Department will have another set of regulations. He didn't think that two agencies were necessary to do the same thing, one overseeing the other. With the amendment, it would give the DHES the authority above the Oil and Gas Commission.

CHAIR. GROSFIELD said the hydrologically connected language in the amendment would occur on the bottom of Page 1 of the bill which means that it applies to (a) through (n) to everything from injection wells to agriculture, irrigation facilities, storm water, etc. He asked **Mr. Pilcher** if that language was necessary for the whole list.

Mr. Pilcher responded that it was the department's intent that it be applied to any activities identified in the list which would be excluded under the requirement to have a groundwater permit from the DHES. EPA'S concern would be that the department would not be giving anything to EPA because they operate the only Waste Water Discharge Permit Program in the State of Montana, and that satisfies the requirements of the Montana Water Quality Act and the Federal Clean Water Act. The Class 2 oil and gas injection wells were excluded from a groundwater permit.

CHAIR. GROSFIELD said with that explanation he would oppose the amendment.

Vote: **MOTION TO ADOPT FROM AMENDMENT NO. sb036201.amk, AMENDMENT NO. 2, FAILED.**

Motion: **SEN. TVEIT MOVED TO ADOPT AMENDMENT NO. sb036204.ate AS CONTAINED IN EXHIBIT 14.**

Mr. Fitzpatrick said the amendment basically makes an agency, who has the responsibility to issue a groundwater permit, responsible for identifying a mixing zone. Under the current rules that the DHES has adopted, a mixing zone can be obtained only through a permit. The amendment will allow an agency such as DSL or other permitting authority to identify groundwater mixing zones.

Mr. Pilcher said the bill would allow the other agencies that have established permitting responsibilities to establish a mixing zone using the guidance of the DHES.

SEN. WELDON asked what other agencies would be affected by the amendment. **Mr. Pilcher** replied the DSL, DHES, individual households, Hazard Waste Bureau of the DHES, and the Oil and Gas Commission, which would have authority over most injection wells.

CHAIR. GROSFIELD asked **Mr. Pilcher** to explain how this amendment would affect irrigation facilities and agriculture with respect to the discharge permit exclusion under subsection (5) (f) of the bill. **Mr. Pilcher** said he had problems with irrigation facilities and agricultural practices requiring mixing zones. He did not see that DNRC would attempt to establish mixing zones for those.

Vote: MOTION TO ADOPT AMENDMENT NO. sb036204.ate, PASSED WITH SEN. BROOKE, SEN. CHRISTIAENS, AND SEN. WELDON VOTING NO.

Motion/Vote: SEN. TVEIT MOVED TO DO PASS SB 362 AS AMENDED. MOTION CARRIED 7-4 ON A ROLL CALL VOTE.

EXECUTIVE ACTION ON SB 330

Motion: SEN. FOSTER MOVED TO ADOPT AMENDMENT sb033001.amk AS CONTAINED IN EXHIBIT 15.

Discussion: Mr. Kakuk explained the amendments no. sb033001.amk to the committee members. He said the amendments were requested by **SEN. SWYSGOOD,** and were developed by the DHES and representatives from the mining industry.

He said on amendment no. 3, he would like to ask a representative from the DHES to comment on that.

CHAIR. GROSFIELD asked **Mr. Pilcher** if he would explain amendment no. 3. He responded that the department was comfortable with the proposed amendments and felt that they improve the bill significantly. In regard to amendment no. 1, there would be some language proposed later when hearing SB 331, that modifies the language shown in SB 330 and SB 331. The committee may want to review that language to be sure of consistency between the two bills.

He said Class 3 and 4 groundwaters may not meet the text of high quality waters, due to the naturally occurring dissolved solids in those groundwaters. Amendment No. 3 would narrow down what was in the original bill with respect to waters to be excluded from protection under the definition of high quality. Subsection (ii) deals with intermittent streams, an issue that has been of concern for quite some time, and it does provide a workable definition of what constitutes an intermittent stream.

CHAIR. GROSFIELD asked **Mr. Pilcher** to explain amendment no. 5 in relationship to the change in amendment no. 3. **Mr. Pilcher** responded that striking "high quality" would restore the language

as it is currently contained in the nondegradation section of the Montana Water Quality Act, such that the state's nondegrdation policy would apply to all state waters and would not just apply to high quality waters. EPA requires that for the water quality standards.

CHAIR. GROSFIELD asked what the significance was of changing the definition of "high quality." **Claudia Massman, Environmental Sciences, Attorney, DHES,** said that defines, for instance, that if the waters were impaired or if the waters involved an intermittent stream, they would no longer be "high quality" waters and would not be protected by the nondegradation policy.

Mr. Kakuk said nondegradation only applies to "high quality" waters. He couldn't see any reason for not keeping "high quality" waters in that subsection in the bill since it appears in other subsections of the nondegradation policy statute.

CHAIR. GROSFIELD asked why the number of 270 days was used for intermittent streams instead of some other number. **Mr. Pilcher** said other states used that to determine intermittent streams, and it seemed workable, so they accepted it. If a stream is dry for 270 days out of a year, they were not high quality waters. A stream like the Blackfoot River that is intermittent will generally have surface expression for longer than 270 days, and therefore any beneficial uses would be protected.

SEN. WELDON said he had trouble understanding amendment no. 1. that says: "for a parameter if that change is likely to affect a beneficial use." He asked **Mr. Pilcher** what beneficial use was. He replied that there were a number of beneficial uses identified by the Board of Health and Environmental Sciences such as, agriculture, public water supply, consumptive use, industrial use, and aquatic life.

SEN. WELDON wondered how the language in Amendment no. 1 differed from the current language. **Mr. Pilcher** said the language in the Water Quality Act was very restrictive. It basically says: "if any parameter is altered or degraded in any manner, that is truly degradation." The bill would attempt to remove that restrictive language, and the amendment would attempt to clarify that with a reasonable compromise.

Vote: **MOTION TO ADOPT AMENDMENTS AS CONTAINED IN EXHIBIT 15, CARRIED UNANIMOUSLY.**

Motion: **SEN. BROOKE MOVED TO ADOPT AMENDMENTS No. sb033002.amk AS CONTAINED IN EXHIBIT 16.**

SEN. BROOKE reviewed the amendments with the committee members.

{Tape: 3; Side: A}

She said that with respect to Amendment No. 1, what happens to state waters involves a lot of people and residents. All people in the state should be defined as interested persons, not only people with property interests.

CHAIR. GROSFIELD said Page 7 says: "interested person wishing to challenge a final department decision may request a hearing before the Board within 30 days." He asked if that was the only place that the term "interested person" was used in the bill other that in the definitions section. **Mr. Kakuk** said that was his understanding.

CHAIR. GROSFIELD asked **Mr. Pilcher** with respect to **SEN. BROOKE'S** Amendment No. 2, if any of the water quality permits that they issued were irrevocable. He answered that all of the permits that were issued were subject to review and there were provisions to revoke a permit if the permittee fails to comply with the rules.

CHAIR. GROSFIELD asked if the bill would take away the ability of the department to revoke a permit. **Mr. Joscelyn** replied that under SB 401, there was a potential to revoke a permit. In water quality permitting, the ability does exist if the permittee does not comply. But the way SB 401 was written, there was a potential to revoke a permit even though someone was in full compliance. This takes all the control out of the hands of the permittee. The bill is proposing to go beyond the initial degradation authorization hearing and create a contested case before the Board of Health on modification required by the department based on their 5 year reviews.

SEN. FOSTER said there were some protections built into the bill on Lines 21-24, where there can be modifications. In the Public Service Commission hearings anyone could testify. Once there was a final decision, that was it. The point of input was in the examination of the issues, not after the order had been in effect. The way the wording in the amendment was proposed, it would be inconsistent with that. Therefore, he would resist the amendment.

Motion: SEN. WELDON MOVED TO SEGREGATE THE AMENDMENTS AND CONSIDER AMENDMENT NO. 2 FIRST.

SEN. WELDON asked if the amendment would take away the power of the DHES to revoke a permit.

SEN. BROOKE said amendment no. 2 changes the bill. She didn't like the bill, so was trying to change it. She didn't like the fact that the department doesn't have the authority to revoke a permit and was trying to take it back to the original intent of the nondegradation statute.

Vote: MOTION TO ADOPT FROM AMENDMENT NO. sb033002.amk, AMENDMENT NO. 2, CARRIED 6-4 ON A ROLL CALL VOTE.

Vote: SEGREGATED MOTION TO ADOPT FROM AMENDMENT NO. sb033002.amk, AMENDMENT NO. 1, FAILED 6-5 ON A ROLL CALL VOTE.

Motion/Vote: SEN. FOSTER MOVED TO DO PASS SB 330 AS AMENDED. MOTION CARRIED 8-3 ON A ROLL CALL VOTE.

EXECUTIVE ACTION ON SB 331

Motion: SEN. FOSTER MOVED TO DO PASS SB 331.

Motion: SEN. FOSTER MOVED TO ADOPT AMENDMENTS NO. sb033102.amk AS CONTAINED IN EXHIBIT 17.

Discussion: Mr. Kakuk said he would try to explain the main intention of the amendments. He said that these amendments were requested by **SEN. BECK,** and that the Discussion Draft, prepared by staff at the committee's request, **EXHIBIT 17 DD,** included these amendments and was nearly accurate. There was one change needed with respect to Amendment No. 4 where it says: "and providing an effective date"; that should be changed to: "and providing an immediate effective date." Another error was on Page 13, Lines 7-13 of the Discussion Draft where Items (i), (ii), and (iii) should be stricken and replaced with Amendment No. 22, items (i), (ii), (iii), and (iv). Those amendment items were developed by representatives from the mining industry and the DHES. **Mr. Kakuk** reviewed the rest of the amendments with the committee members.

SEN. KEATING asked **Mr. Pilcher** what the difference was between 7.5 milligrams per liter for waste discharge and 5.0 milligrams per liter. He responded that the department rules had stated that conventional septic systems were okay, but once they reached half the standards it meant they were 50% away from the drinking water standards already. They would therefore be required to go to Level 2 treatment which was much more expensive, but would take out those nitrates. The level of nitrates would generally be going up because they would be mixing in with background nitrates already in the groundwater.

SEN. KEATING asked if the mixing zone goes to the edge of the property. **Mr. Pilcher** replied that currently there was a bill being considered addressing that, and if it passes, the mixing zone would go to the edge of the property. If sewage is discharged and it goes above 5.0, the discharge will be significant and the applicant will have to go through nondegradation review.

{Tape: 3; Side: B}

CHAIR. GROSFIELD asked **Mr. Horpestad** what was going on with the federal rules, as described on the top of page 15 of the Discussion Draft, and how that relates to nonsignificance under

nondegradation. He answered that the language that was added reflects the fact that under federal law the treatment requirements must be imposed in order for Montana to receive primacy for the permit program. The second part of that says that to the extent the federal government has not adopted minimum treatment standards, the board can adopt them, if they go through the rule-making process and determine that they are economically, technologically and environmentally feasible." It also says if it is nonsignificant under the nondegradation rules, the department cannot require minimum treatment, except where required by the federal requirements.

CHAIR. GROSFIELD asked **Mr. Horpestad** to explain Section 9, Subsection (b) on page 16 of the Discussion Draft, and the proposed changes beginning on Lines 21-23. He responded that the first change to subsection (b) in the bill (Lines 18-20 of the Discussion Draft) meant that a natural spring does not contain industrial waste, and a permit cannot be required for it. The language on Lines 21-23 was stricken because it left the department in an awkward position because that groundwater would have to be monitored to see if it contained industrial waste such that it could require a permit. The new language beginning after Line 23 says that if you are pumping groundwater and discharging it to surface water, it cannot cause the surface water to violate standards.

SEN. BROOKE said the bill in this subsection (b) says essentially that a groundwater discharge to surface water does not require a permit. She asked **Mr. Horpestad** to further comment on that. He said the problem with that provision was that there are areas in the state where the groundwater is of lower quality than the surface water. The original language of the bill says that they cannot require a permit for discharging that groundwater to surface water. The revised language in the Discussion Draft does not prevent them from determining that the discharge constitutes a significant alteration to the surface water, and therefore could require a permit.

{Comments: there was so much background noise it was difficult to hear.}

SEN. BROOKE said in Missoula the aquifer was under the septic tanks. She asked what that did with respect to the current standards. Would the bill as proposed to be amended be more threatening to the aquifer? **Mr. Horpestad** replied that the proposed amendments raise the nondegradation significance lever for good quality groundwater from the current 2.5 parts per million to 5 parts per million. **SEN. BROOKE** said with all the building in Missoula and more and more septic tanks, it would seem that this would cause more and more degradation to the aquifer. **Mr. Horpestad** said the bill would require alternate water supplies or alternate treatment systems to keep the groundwater at the same level.

Mr. Horpestad said if you start out with zero nitrates in the groundwater, and it is then allowed to go to 10 parts per million of nitrate from human sewage, that means if you drink that groundwater, essentially you are drinking 20% recycled sewage, and there may be other things present besides nitrates.

SEN. CHRISTIAENS asked how that would affect the pricing of housing. If there was already a high level of nitrates in the land, what does it cost to go from one level of treatment to another? **Mr. Horpestad** said that secondary treatment would require biological treatment which converts the nitrates to nitrogen gas. That is usually done with a sand filter or a small treatment plant. He estimated that would cost from $2,500 to $7,000 additional per housing unit.

SEN. CHRISTIAENS asked if he could install a septic tank himself. **Mr. Horpestad** replied that he would have to hire a contractor to do that.

SEN. WELDON said he had 3 specific concerns with the bill: 1) the changes in arsenic levels, 2) what happened to the measurement method, and 3) the savings clause. In the savings clause it says: "Section 75-5-614 does not affect proceedings that were begun before (the effective date of this act)." He asked what that meant. **Mr. Pilcher** said that language was put in the bill at the request of the DHES to deal with litigation that was currently in district court relative to violations that took place elsewhere in Montana. They wanted to make sure that the change would not alter those ongoing cases.

Mr. Pilcher said that with respect to the measurement method, it was their understanding that it would be necessary for the committee to act on the original amendments, and then amendments to the amendments would be provided to the committee members to address dissolved vs. total recoverable, and the risk levels that were acceptable to the department.

CHAIR. GROSFIELD said they would have to vote on the first set of amendments before they could change the amendments. He asked if it was correct to say that the amendments to the amendments were much closer to what the department feels comfortable with, with respect to the measurement method. **Mr. Pilcher** said that was correct.

SEN. BROOKE said the memo from the Department of Justice voiced their concern about the total recoverable versus the dissolved measurement methods. **Mr. Kakuk** said the staff's interpretation was that the proposed amendments had just taken the language that caused concern by the DHES and moved it from stricken section 2 into the section where it is now. They move it but have not altered it. The amendments to the amendments, if accepted by the committee, will alter it.

SEN. BROOKE said that on Page 5 of the Discussion Draft, Lines 3-4 where it says: "...permittee, or person potentially liable under any state or federal environmental remediation statute,...", the Department of Justice has serious concern about that. She asked why the site-specific standards were left in the bill. **Mr. Kakuk** said they were concerned about other routes of exposure, and an additional amendment that will be presented to the committee has been prepared to address that. He said that will be Amendment No. SB033103.amk.

Vote: MOTION TO ADOPT AMENDMENT NO. sb033102.amk, CARRIED WITH SEN. BROOKE VOTING NO.

CHAIR. GROSFIELD asked **Mr. Pilcher** to explain the amendments to the amendments called "Concept amendments to SB 331 as amended by **SEN. BECK** (SB033102.amk), which were from the DHES as contained in **EXHIBIT 18. Mr. Pilcher** reviewed the amendments with the committee.

Motion: SEN. WELDON MOVED TO APPROVE THE CONCEPT AMENDMENTS AS CONTAINED IN EXHIBIT 18.

SEN. TVEIT asked **Sandy Stash, ARCO,** if she would comment on the amendments. **Ms. Stash** said she did not see a real issue with the amdendments to **BECK** Amendment 10 and to **BECK** Amendment 33. The amendment to **BECK** Amendment 21 gets to the heart of dissolved vs. total recoverable and would not be acceptable.

SEN. BECK, Sponsor of SB 331, said he would like to reject the amendment to **BECK** Amendment 10 because that was already in SB 330. On the Amendment to **BECK** Amendment 21, when it comes to the carcinogen rates, he would support that. He said he did not agree with the section of the amendment that takes "(c) for all metal parameters,...", etc., out of the bill. With respect to the amendments to **BECK** Amendment 33, he asked why the department had added: ..."and the department has the opportunity to participate in the review of the activity."

Mr. Pilcher said they were only attempting to recognize that some of the other agencies that have that decision-making responsibility may not have the same level of technical expertise on all the issues that the DHES could offer.

CHAIR. GROSFIELD asked **Mr. Pilcher** regarding the amendment to **BECK** Amendment 21 what the significance of striking subsection (a) was. He responded it was intended to eliminate the maximum contaminant levels for groundwater.

Motion: SEN. WELDON WITHDREW HIS MOTION TO APPROVE ALL THE CONCEPT AMENDMENTS AND MOVED TO ADOPT THE CONCEPT AMENDMENT TO BECK AMENDMENT 10.

SEN. BROOKE asked why the language wasn't the same as in SB 330. **Mr. Horpestad** said the problem with the language in Amendment 10

is that it was unclear the way it was written. Does it say "the parameter likely to be affected", or does it mean "level likely to be affected?" If it means "level", that is approaching standards and it goes beyond the concept of nondegradation. The proposed change that they suggest would be: " the parameters likely to be affected by the activity" and the nonsignificance section in the law would be used to determine if that would result in a significant change.

SEN. TVEIT said the problem seems to be that the proposed language in the amendment to **BECK** Amendment 10 is not the same as in SB 330, is that right? **CHAIR. GROSFIELD** said if the language was different that would have to be rectified. The proposed language was contrary to language in SB 330.

SEN. KEATING said he didn't see where the language in one bill was contrary to the language in the other bill. It was just approached from a different angle. The language in SB 330 deals with improving the quality and the amendment to **BECK** Amendment 10 says: "...a parameter likely to be affected..." Those aren't different ideas.

SEN. FOSTER said he would oppose that amendment because the language they wanted was adopted in SB 330, and they should be consistent.

Vote: **MOTION TO ADOPT THE CONCEPT AMENDMENT TO BECK AMENDMENT 10 FAILED WITH SEN. BROOKE, SEN. CHRISTIAENS, AND SEN. WELDON VOTING YES.**

Motion/Vote: **SEN. WELDON MOVED TO STRIKE SUBSECTION (a) IN BECK AMENDMENT 21. MOTION CARRIED UNANIMOUSLY.**

Motion/Vote: **SEN. WELDON MOVED TO ADOPT THE LANGUAGE IN THE CONCEPT AMENDMENTS TO BECK AMENDMENT 21 IN THE SUBSECTIONS WHERE (b) AND (d) WERE STRUCK. MOTION CARRIED UNANIMOUSLY.**

Motion: **SEN. WELDON MOVED TO STRIKE SUBSECTION (c) IN BECK AMENDMENT 21.**

Mr. Horpestad reviewed dissolved vs. total recoverable as he previously stated.

Vote: **MOTION TO STRIKE SUBSECTION (c) FROM BECK AMENDMENT 21, FAILED ON A ROLL CALL VOTE OF 6-5.**

Motion/Vote: **SEN. WELDON MOVED TO ADOPT THE NEW SUBSECTION (c) IN THE CONCEPT AMENDMENTS TO BECK AMENDMENT 21. MOTION CARRIED UNANIMOUSLY.**

Motion/Vote: **SEN. WELDON MOVED TO ADOPT THE CONCEPT AMENDMENT TO BECK AMENDMENT 33. MOTION CARRIED WITH SEN. CRISMORE VOTING NO.**

Motion: SEN. CHRISTIAENS MOVED TO ADOPT AMENDMENTS NO. sb033103.amk AS CONTAINED IN EXHIBIT 19.

Mr. Pilcher explained the amendments to the committee members.

SEN. TVEIT asked why "shall" was struck and replaced by "may" in amendment no. 1. **Mr. Pilcher** replied that was a decision that the board made and this amendment gives them the flexibility to consider and decide on a case-by-case basis the appropriateness of replacing surface water quality standards with site specific standards. The intent was to allow the board to consider the information that would be submitted in response to the guidance made available to an applicant.

SEN. TVEIT asked **Mr. Pilcher** to explain, "...other routes of exposure" in amendment no. 2. He replied that they would be considering things other than just what was dissolved in the water. That could include impacts upon aquatic life in the streams.

CHAIR. GROSFIELD asked if the board did that in adopting other water quality rules. **Mr. Horpestad** responded that the board hasn't because they have had total recoverable standards.

Vote: MOTION TO ADOPT AMENDMENTS NO.sb033103.amk AS CONTAINED IN EXHIBIT 19, FAILED.

Motion/Vote: SEN. FOSTER MOVED TO DO PASS SB 331 AS AMENDED. MOTION CARRIED 7-4 ON A ROLL CALL VOTE.

{Tape: 4; Side: A}

EXECUTIVE ACTION ON SB 247

Motion/Vote: SEN. COLE MOVED TO TABLE SB 247. MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 391

Motion: SEN. BROOKE MOVED TO ADOPT AMENDMENTS NO. sb039101.ate AS CONTAINED IN EXHIBIT 20.

CHAIR. GROSFIELD explained the amendments to the committee members. He said the amendments were in response to concerns from people who testified on the bill.

Vote: MOTION TO ADOPT AMENDMENTS NO. sb039101.ate, CARRIED UNANIMOUSLY.

SEN. CHRISTIAENS asked if there was a fiscal note on SB 391. **CHAIR. GROSFIELD** said that he just received a fiscal note.

Motion: **SEN. BROOKE MOVED TO ADOPT AMENDMENTS NO. sb039102.amk AS CONTAINED IN EXHIBIT 21.**

CHAIR. GROSFIELD explained the amendments to the committee members.

Vote: **MOTION TO ADOPT AMENDMENTS NO. sb039102.amk CARRIED UNANIMOUSLY.**

SEN. FOSTER said there was an instream flow bill in the House, and that it should be the vehicle that would address the instream flow problems.

Motion/Vote: **SEN. FOSTER MOVED TO TABLE SB 391. MOTION FAILED 6-5 ON A ROLL CALL VOTE.**

Motion/Vote: **SEN. CHRISTIAENS MOVED TO DO PASS SB 391 AS AMENDED. MOTION CARRIED 7-4 ON A ROLL CALL VOTE.**

CONTINUATION OF EXECUTIVE ACTION ON SB 415

Motion: **SEN. CHRISTIAENS MOVED TO ADOPT AMENDMENTS NO. sb041501.ate AS CONTAINED IN EXHIBIT 22.**

Discussion: **Mr. Everts** explained amendments no. sb041501.ate to the committee members.

Vote: **MOTION TO APPROVE AMENDMENTS NO. sb041501.ate, CARRIED UNANIMOUSLY.**

Motion/Vote: **SEN. BROOKE MOVED TO DO PASS SB 415 AS AMENDED. MOTION CARRIED UNANIMOUSLY.**

{Comments: the meeting was recorded on 4, 2 hour tapes.}

ADJOURNMENT

Adjournment: 9:00 PM

LORENTS GROSFIELD, CHAIRMAN

THEDA ROSSBERG, SECRETARY
by Shirley Herrin

LG/TR

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 2-18-95

SEN

NAME	PRESENT	ABSENT	EXCUSED
VIVIAN BROOKE	✓		
B.F. "CHRIS" CHRISTIAENS	✓		
MACK COLE	✓		
WILLIAM CRISMORE	✓		
MIKE FOSTER	✓		
TOM KEATING	✓		
KEN MILLER	✓		
JEFF WELDON	✓		
BILL WILSON	✓		
LARRY TVEIT, VICE CHAIRMAN	✓		
LORENTS GROSFIELD, CHAIRMAN	✓		

SEN:1995
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SENATE STANDING COMMITTEE REPORT

February 20, 1995

MR. PRESIDENT:
We, your committee on Natural Resources having had under consideration SB 346 (first reading copy -- white), respectfully report that SB 346 be amended as follows and as so amended do pass.

Signed: _____
Senator Lorents Grosfield, Chair

That such amendments read:

1. Page 2, line 9.
Strike: "If"
Insert: "When"

2. Page 3, line 28.
Following: "which"
Strike: "all designated"
Insert: "an additional"
Following: "beneficial"
Insert: "use or"

3. Page 4, line 9.
Following: "(b)"
Insert: "the"
Following: "beneficial" in two places
Insert: "use or" in two places

4. Page 4, line 13.
Following: "standards"
Insert: "for the parameter or parameters at issue"

5. Page 4, line 17.
Following: "that"
Insert: "reasonable"
Following: "the"
Insert: "implementation"

6. Page 4, line 20.
Following: "a"
Insert: "total"
Strike: "longer than"
Insert: "of"

7. Page 4, line 27.
Following: "review"
Insert: "that the applicant is not complying with the approved

implementation plan"

8. Page 4, line 28.
Following: "standard"
Insert: "for a parameter"

9. Page 5.
Following: line 4
Insert: "(9) The board may modify the plan if the permittee submits convincing evidence to the board that the plan needs modification. The board may not extend the plan beyond a total period of 20 years."
Renumber: the subsequent subsection

10. Page 5, lines 10 and 11.
Strike: "extend beyond" on line 10
Insert: "be in effect for a total period longer than"
Strike: "from" on line 10 through "standard" on line 11
Strike: "and" on line 11
Insert: "in the"

-END-

SENATE STANDING COMMITTEE REPORT

February 20, 1995

MR. PRESIDENT:
We, your committee on Natural Resources having had under consideration SB 252 (first reading copy -- white), respectfully report that SB 252 be amended as follows and as so amended do pass.

Signed: _____
Senator Lorents Grosfield, Chair

That such amendments read:

1. Title, lines 4 and 5.
Strike: "PROVIDING" on line 4 through "ZONES" on line 5
Insert: "CLARIFYING THE WATER QUALITY LAWS TO RECOGNIZE AND PROVIDE FOR GROUND WATER MIXING ZONES AT LEAST TO THE EXTENT OF THE PROPERTY OWNED OR CONTROLLED BY THE DISCHARGER"

2. Page 1.
Strike: lines 8 through 17

3. Page 1 , line 21 through page 2, line 10.
Strike: Section 1 in its entirety
Renumber: subsequent sections

4. Page 2.
Following: Line 17
Insert: "(3) "Controlled property" means the land area controlled by a discharger, at the time that the permit was issued, through ownership, lease, or otherwise, within which the discharger controls beneficial uses of ground water."
Renumber: subsequent subsections

5. Page 3, lines 14 through 18.
Strike: subsection (14) in its entirety
Renumber: subsequent subsections

6. Page 5, line 15, 17, 18.
Strike: "and" through "zones"

7. Page 5, lines 16 and 17.
Strike: "providing" on line 16 through "(a)" on line 17
Insert: ", requiring"

8. Page 5, line 19.
Strike: "(i)"
Insert: "(a)"
Following: "size"

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Insert: ", except that ground water mixing zones must extend from the point of discharge down gradient to the discharger's controlled property boundary and may, in accordance with rules adopted by the board, extend further"

9. Page 5, line 20.
Strike: "(ii)"
Insert: "(b)"

10. Page 5, line 21.
Strike: "(iii)"
Insert: "(c)"

11. Page 5.
Strike: lines 22 through 28

12. Page 6, lines 21 through 23.
Strike: Section 4 in its entirety
Renumber: subsequent section

-END-

SENATE STANDING COMMITTEE REPORT

February 20, 1995

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration SB 362 (first reading copy -- white), respectfully report that SB 362 be amended as follows and as so amended do pass.

Signed: _____
Senator Lorents Grosfield, Chair

That such amendments read:

1. Title, line 5.
Strike: "SECTION"
Insert: "SECTIONS"
Following: "75-5-401"
Insert: "AND 75-5-605"

2. Page 2, line 2.
Following: "activities"
Insert: "at wells injecting fluids associated with oil and gas exploration and production"

3. Page 2, line 4.
Following: "individuals"
Insert: "disposing"

4. Page 2, lines 11 through 16.
Strike: "subsections (5)(i) through (5)(k) in their entirety"
Renumber: subsequent subsections

5. Page 2.
Following: line 22
Insert: "(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4)(a) through (4)(c)."
Renumber: subsequent subsections

6. Page 2.
Following: line 28
Insert: "**Section 2.** Section 75-5-605, MCA, is amended to read:
"**75-5-605. Prohibited activity.** (1) It is unlawful to:
(a) cause pollution as defined in 75-5-103 of any state waters or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any state waters;

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(b) violate any provision set forth in a permit or stipulation, including but not limited to limitations and conditions contained in the permit;

(c) site and construct a sewage lagoon less than 500 feet from an existing water well;

(d) cause degradation of state waters without authorization pursuant to 75-5-303;

(e) violate any order issued pursuant to this chapter; or

(f) violate any provision of this chapter.

(2) ~~It~~ Except for the discharges identified in 75-5-401(5), it is unlawful to carry on any of the following activities without a current permit from the department:

(a) construct, modify, or operate a disposal system which discharges into any state waters;

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into any state waters; or

(c) discharge sewage, industrial wastes, or other wastes into any state waters.""

-END-

SENATE STANDING COMMITTEE REPORT

February 20, 1995

MR. PRESIDENT:
We, your committee on Natural Resources having had under consideration SB 330 (first reading copy -- white), respectfully report that SB 330 be amended as follows and as so amended do pass.

Signed: _____
Senator Lorents Grosfield, Chair

That such amendments read:

1. Page 1, line 25.
Following: "~~parameter~~"
Insert: "for a parameter if that change is likely to affect a beneficial use"

2. Page 2, line 5.
Following: "means"
Insert: "all"

3. Page 2, lines 8 through 17.
Strike: "that" on line 8 through "activity" on line 17
Insert: ", except:
(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and
(b) surface waters that:
(i) are not capable of supporting any one of the designated uses for their classification; or
(ii) have zero flow or surface expression for more than 270 days during most years"

4. Page 4, line 18 through page 6, line 15.
Strike: section 2 in its entirety
Renumber: subsequent sections

5. Page 6, line 18.
Strike: "high quality"

6. Page 7, lines 15 through 25.
Strike: subsection (6) in its entirety
Insert: "(6) Every 5 years, the department shall review authorizations to degrade state waters. To enable the department to adequately review authorizations as required under this section, the authorization holder shall revise the initial authorization application no sooner than 3 1/2 years and no later than 4 years after the date of the

authorization or the date of the latest department review. The specific revised information required must be determined by the department. If, based on the review, the department determines that the standards and objectives of 75-5-303 or the rules adopted pursuant to 75-5-303 are not being met, it shall revoke or modify the authorization. A decision by the department to revoke or modify an authorization may be appealed to the board."

7. Page 7, lines 28 through 30.
Strike: section 4 in its entirety

-END-

SENATE STANDING COMMITTEE REPORT

February 20, 1995

MR. PRESIDENT:
We, your committee on Natural Resources having had under consideration SB 331 (first reading copy -- white), respectfully report that SB 331 be amended as follows and as so amended do pass.

Signed: _____
Senator Lorents Grosfield, Chair

That such amendments read:

1. Title, line 5.
Strike: "RULES OR"
Insert: "TREATMENT"

2. Title, line 6.
Following: "ECONOMICALLY"
Insert: ", ENVIRONMENTALLY,"
Following: "FEASIBLE;"
Strike: "AND"

3. Title, line 7.
Strike: "75-5-201,"
Strike: "75-5-306,"
Strike: "75-5-611,"

4. Title, line 8.
Following: "MCA"
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

5. Page 1, line 25.
Following: "unenforceable."
Insert: "[Section 1], providing conditions for adoption of standards more stringent than federal standards, is not intended to prohibit the adoption of ground water quality standards."

6. Page 2, lines 1 and 2.
Strike: ":" on line 1 through "(a)" on line 2

7. Page 2, lines 4 and 5.
Strike: "; and" on line 4 through "75-5-307" on line 5

8. Page 2, line 10 through page 4, line 6.
Strike: section 2 in its entirety
Renumber: subsequent sections

Amd. Coord.
Sec. of Senate

9. Page 4, line 9.
Following: "applicant,"
Insert: "permittee, or person potentially liable under any state or federal environmental remediation statute,"

10. Page 4, line 23.
Following: "~~parameter~~"
Insert: "for a parameter if that change is likely to affect a beneficial use"

11. Page 5, line 7.
Strike: "(a)"

12. Page 5, lines 9 and 10.
Strike: subsection (10)(b) in its entirety

13. Page 5.
Following: line 15
Insert: "(13) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc."
Renumber: subsequent subsections

14. Page 5, line 19.
Strike: "(a)"

15. Page 5, lines 23 and 24.
Strike: subsection (14)(b) in its entirety

16. Page 6, line 26.
Following: "lagoons"
Insert: "used solely for treating, transporting, or impounding pollutants"

17. Page 7, line 16.
Following: "20"
Insert: ", following the time schedule of the lead agency"

18. Page 7, line 29 through page 8, line 4.
Strike: section 6 in its entirety
Renumber: subsequent sections

19. Page 8, line 10.
Strike: "intermittent" through "that"
Insert: "streams that, due to sporadic flow,"

20. Page 8, line 11.

Strike: "a viable fishery"
Insert: "an aquatic ecosystem that includes salmonid or nonsalmonid fish"

21. Page 8, lines 13 and 14.
Strike: "that" on line 13 through "feasible" on line 14
Insert: ", giving consideration to the economics of waste treatment and prevention. Standards adopted by the board must meet the following requirements:

(a) for measuring carcinogens in surface water, the water quality standard for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1 x 10-3 in the case of arsenic and 1 x 10-5 for other carcinogens;

(b) for all metal parameters, the values used by the board as criteria for standards of water quality must be stated as dissolved concentrations;

(c) standards for the protection of aquatic life do not apply to ground water; and

(d) standards may not exceed the maximum contaminant levels obtained from 40 CFR, part 141, as of [the effective date of this act]"

22. Page 9, lines 9 through 11.
Strike: "a" on line 9 through "liter" on line 11
Insert: "changes to ground water quality are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate at the boundary of the ground water mixing zone does not exceed:

(i) 7.5 milligrams per liter for nitrate sources other than domestic sewage;

(ii) 5.0 milligrams per liter for domestic sewage effluent discharged from a conventional septic system;

(iii) 7.5 milligrams per liter for domestic sewage effluent discharged from a septic system using level two treatment, which must be defined in the rules; or

(iv) 7.5 milligrams per liter for domestic sewage effluent discharged from a conventional septic system in areas where the ground water nitrate level exceeds 5.0 milligrams per liter primarily from sources other than human waste"

23. Page 9, line 25.
Strike: "acquires information"
Insert: "is presented with facts indicating"

24. Page 9, lines 26 and 27.

Strike: "60" on line 26 through "75-5-307" on line 27
Insert: "90 days, initiate rulemaking"

25. Page 10, lines 6 and 15.
Following: "economically"
Insert: ", environmentally,"

26. Page 10, line 14.
Following: "so"
Insert: "through rulemaking, for parameters likely to affect beneficial uses,"

27. Page 10, line 15.
Following: "feasible."
Insert: "Except for the technology-based treatment requirements set forth in 40 CFR, chapter I, subchapter N, minimum treatment may not be required to address the discharge of a parameter when the discharge is considered nonsignificant under rules adopted pursuant to 75-5-301."

28. Page 10, line 30 through page 11, line 8.
Strike: section 11 in its entirety
Renumber: subsequent sections

29. Page 11, lines 17 through 19.
Strike: "The" on line 17 through "waters" on line 19
Insert: "Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part and is not degradation if:

(i) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; or

(ii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters"

30. Page 12, line 6.
Following: "applications for"
Insert: "new"
Strike: "30"
Insert: "60"

31. Page 12, lines 8 and 9.
Strike: "deficiency" through "initial notice" on line 9
Insert: "major deficiency issues, based on the information submitted. The department and the applicant may extend

these timeframes, by mutual agreement, by not more than 75 days"

32. Page 12, line 27.
Strike: "industrial or other"

33. Page 12, line 28.
Strike: ";"
Insert: ". Any placement of materials that is authorized by a permit issued by any state or federal agency is not a placement of wastes within the prohibition of this subsection if the agency's permitting authority includes provisions for review of the placement of materials to ensure that it will not cause pollution of state waters and the department has the opportunity to participate in the review of the activity."

34. Page 13, line 12 through 15, line 9.
Strike: section 15 in its entirety
Renumber: subsequent sections

35. Page 16, line 4.
Strike: "When"
Insert: "In an action"
Following: "account"
Insert: "and the court shall consider"

36. Page 16, line 9.
Following: "amounts"
Insert: "voluntarily"

37. Page 16, lines 23, 26, and 27.
Following: "~~drainage,~~"
Insert: "drainage,"

38. Page 17, line 6.
Following: "~~drainage,~~"
Insert: "drainage,"

39. Page 17, line 8.
Following: "specification"
Strike: ";"
Insert: ". However, any facility reviewed by the department under Title 75, chapter 5, is not subject to the provisions of this section."

40. Page 17, lines 15 and 17.
Strike: "through 3"

Insert: "and 2"

41. Page 17.
Following: line 17
Insert: " NEW SECTION. **Section 17. Saving clause.** Section 75-5-614 does not affect proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 18. Effective date.** [This act] is effective on passage and approval."

-END-

SENATE STANDING COMMITTEE REPORT

February 20, 1995

MR. PRESIDENT:
We, your committee on Natural Resources having had under consideration SB 391 (first reading copy -- white), respectfully report that SB 391 be amended as follows and as so amended do pass.

Signed: _____
Senator Lorents Grosfield, Chair

That such amendments read:

1. Title, line 10.
Strike: "85-2-319,"

2. Title, line 11.
Strike: "AND A RETROACTIVE APPLICABILITY DATE"

3. Page 2.
Following: line 2
Insert: "(6) This section may not be construed to identify a minimum in streamflow for any purpose other than for encouraging voluntary solutions to season- specific and site-specific fishery resource problems.
(7) This section may not be construed in any manner that would adversely affect existing water rights."

4. Page 2, line 5.
Strike: "In"
Insert: "Subject to the limitations of subsection (3) and in"

5. Page 2, line 9.
Strike: "immediately"
Insert: "substantially"

6. Page 2.
Following: line 13
Insert: "(3) Notwithstanding the provisions of 85-2-311(1)(f) and 85-2-402(2)(d), an applicant for a permit under this section does not have to show a possessory interest in the property where the water is to be put to beneficial use."

7. Page 8, line 5 through page 9 line 9.
Strike: Section 5 in its entirety
Renumber: subsequent sections

8. Page 10.
Following: line 9

Amd. Coord.
Sec. of Senate

Insert: "(6) Subsection (5) is specifically and exclusively intended to encourage nonuse of existing water rights during specific seasons and at specific sites for the benefit of the fishery resource."
Renumber: subsequent subsection

9. Page 11.
Following: line 8
Insert: "(6) Subsection (5) is specifically and exclusively intended to encourage nonuse of existing water rights during specific seasons and at specific sites for the benefit of the fishery resource."
Renumber: subsequent subsection

10. Page 13, line 30 through line 1, page 14.
Strike: "under" on line 30 through "1]" on line 1, page 14

11. Page 14, lines 14 and 15.
Strike: lines 14 and 15 in their entirety

-END-

SENATE STANDING COMMITTEE REPORT

February 20, 1995

MR. PRESIDENT:
We, your committee on Natural Resources having had under consideration SB 415 (first reading copy -- white), respectfully report that SB 415 be amended as follows and as so amended do pass.

Signed: _____
Senator Lorents Grosfield, Chair

That such amendments read:

1. Page 1.
Following: line 2
Insert: "BY REQUEST OF THE SENATE NATURAL RESOURCES COMMITTEE"

2. Page 2, line 10.
Strike: "Private parties are"
Insert: "A person is"

3. Page 2, line 11.
Strike: "their contribution"
Insert: "contributing"

4. Page 2, line 14.
Strike: "and the grantor"

5. Page 2, lines 16 and 17.
Strike: "and" on line 16 through "grantor" on line 17

6. Page 2, line 20.
Strike: "and the grantor"

7. Page 2.
Following: line 26
Insert: "(f) The department shall expend the funds in a manner that maximizes the application of the funds to physically remediating the specific release.
(8) (a) A person may donate in-kind services to remediate a specific release at a specific facility pursuant to subsection (7). A person that donates in-kind services is not liable under 75-10-715 solely as a result of the contribution of in-kind services.
(b) A person who donates in-kind services with respect to remediating a specific release at a specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to

claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or economic loss.

(c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release that is caused by conduct of the remedial action contractor that is negligent or grossly negligent or that constitutes intentional misconduct.

(d) This subsection does not minimize the liability, lessen the standard of liability, or otherwise shield from liability a potentially liable person under 75-10-715 or section 107 of CERCLA for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance."

-END-

SENATE STANDING COMMITTEE REPORT

February 18, 1995

MR. PRESIDENT:
We, your committee on Natural Resources having had under consideration SB 371 (first reading copy -- white), respectfully report that SB 371 be amended as follows and as so amended do pass.

Signed: _____
Senator Lorents Grosfield, Chair

That such amendments read:

PP Page 1, line 11.
Following: "gives the"
Strike: "department"
Insert: "board"

2. Page 2, line 29.
Strike: "in"
Insert: "wholly within the boundaries of"

3. Page 9.
Following: line 10
Insert: "(a) existing activities that are nonpoint sources of pollution as of April 29, 1993;"
Renumber: subsequent subsections

4. Page 9, line 11.
Following: "pollution"
Insert: "initiated after April 29, 1993,"

5. Page 10, line 15.
Following: "chapter"
Strike: "2"
Insert: "4"

6. Page 10.
Following: line 20
Insert: "(p) metallic and nonmetallic mineral exploration performed in accordance with Title 82, chapter 2, parts 3 and 4;"
Renumber: subsequent subsections

7. Page 10, line 25.
Strike: "and"

8. Page 10.
Following: line 25
Insert: "(r) the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works that are

related to existing water rights and that are within wilderness areas so long as existing and anticipated beneficial uses are protected and as long as the changes in existing water quality relative to the project are short term; and"

Renumber: the subsequent subsection

-END-

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 2-18-95
BILL NO. SB 371

Amendments to Senate Bill No. 371
First Reading Copy

Requested by Senator Grosfield
For the Committee on Natural Resources

Prepared by Todd Everts
February 15, 1995

1. Page 2, line 29.
Strike: "in"
Insert: "wholly within the boundaries of"

2. Page 10, line 25.
Strike: "and"

3. Page 10.
Following: line 25
Insert: "(p) the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works that are related to existing water rights and that are within wilderness areas so long as existing and anticipated beneficial uses are protected and as long as the changes in existing water quality relative to the project are short term; and"
Renumber: the subsequent subsection

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE 2-18-95
BILL NO. SB-371

Amendments to Senate Bill No. 371
First Reading Copy

Requested by Senator Weldon
For the Committee on Natural Resources

Prepared by Todd Everts
February 15, 1995

1. Page 6, lines 14 through 18.
Strike: subsection (9) in its entirety

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 2-18-95
BILL NO. SB-371

Amendments to Senate Bill No. 371
First Reading Copy

Requested by Senator Foster
For the Committee on Natural Resources

Prepared by Todd Everts
February 17, 1995

1. Page 9.
Following: line 10
Insert: "(a) existing activities that are nonpoint sources of pollution as of April 29, 1993;"
Renumber: subsequent subsections

2. Page 9, line 11.
Following: "pollution"
Insert: "initiated after April 29, 1993,"

EXHIBIT NO. 4
DATE 2-18-95
BILL NO. SB-371

Amendments to Senate Bill No. 371
First Reading Copy

Requested by Department of Health and Environmental Sciences
For the Committee on Natural Resources

Prepared by Martha Colhoun
February 17, 1995

1. Page 1, line 11.
Following: "gives the"
Strike: "department"
Insert: "board"

2. Page 10, line 15.
Following: "chapter"
Strike: "2"
Insert: "4"

SENATE NATURAL RESOURCES
EXHIBIT NO. 5
DATE 2-18-95
BILL NO. SB-371

Amendments to Senate Bill No. 371
First Reading Copy

Requested by Sen. Brooke
For the Committee on Natural Resources

Prepared by Martha Colhoun
February 17, 1995

1. Page 2, line 29.
Following: "surface"
Insert: "or ground"

2. Page 3, line 2.
Following: "31"
Strike: "and approved by the legislature"

3. Page 6, line 14.
Following: "postpone"
Strike: "or deny"

4. Page 10, line 15.
Strike: subsection (1) in its entirety
Renumber: subsequent subsections

5. Page 10, line 16.
Strike: "solid waste management systems,"

6. Page 10, lines 19 and 20.
Strike: subsection (n) in its entirety
Renumber: subsequent subsections

SENATE NATURAL RESOURCES
EXHIBIT NO. 6
DATE 2-18-95
BILL NO. SB-371

Amendments to Senate Bill No. 371
First Reading Copy

Requested by Senator Foster
For the Committee on Natural Resources

Prepared by Todd Everts
February 15, 1995

1. Page 10.
Following: line 20
Insert: "(o) metallic and nonmetallic mineral exploration performed in accordance with Title 82, chapter 2, parts 3 and 4;"
Renumber: subsequent subsections

NATURAL RESOURCES
EXHIBIT NO. 7
DATE 2-18-95
BILL NO. SB-346

Amendments to Senate Bill No. 346
First Reading Copy

Requested by Senator Grosfield
For the Committee on Natural Resources

Prepared by Todd Everts
February 15, 1995

1. Page 2, line 9.
Strike: "If"
Insert: "When"

2. Page 3, line 28.
Following: "which"
Strike: "all designated"
Insert: "an additional"
Following: "beneficial"
Insert: "use or"

3. Page 4, line 9.
Following: "(b)"
Insert: "the"
Following: "beneficial" in two places
Insert: "use or" in two places

4. Page 4, line 13.
Following: "standards"
Insert: "for the parameter or parameters at issue"

5. Page 4, line 17.
Following: "that"
Insert: "reasonable"
Following: "the"
Insert: "implementation"

6. Page 4, line 20.
Following: "a"
Insert: "total"
Strike: "longer than"
Insert: "of"

7. Page 4, line 27.
Following: "review"
Insert: "that the applicant is not complying with the approved implementation plan"

STATE NATURAL RESOURCES
EXHIBIT NO. 7
DATE 2-18-95
BILL NO. SB-346

8. Page 4, line 28.
Following: "standard"
Insert: "for a parameter"

9. Page 5.
Following: line 4
Insert: "(9) The board may modify the plan if the permittee submits convincing evidence to the board that the plan needs modification. The board may not extend the plan beyond a total period of 20 years."
Renumber: the subsequent subsection

10. Page 5, lines 10 and 11.
Strike: "extend beyond" on line 10
Insert: "be in effect for a total period longer than"
Strike: "from" on line 10 through "standard" on line 11
Strike: "and" on line 11
Insert: "in the"

SENATE NATURAL RESOURCES
EXHIBIT NO. 8
DATE 2-18-95
BILL NO. SB-346

Amendments to Senate Bill No. 346
First Reading Copy

Requested by Senator Brooke
For the Committee on Natural Resources

Prepared by Todd Everts
February 18, 1995

1. Page 3, line 23.
Following: "(1)"
Insert: "(a)"

2. Page 3, line 26.
Following: "indicates that"
Insert: ": (i)"

3. Page 3, line 27.
Following: "uses"
Strike: "."
Insert: "; (ii) elimination of the water quality limiting factors is not possible; or (iii) elimination would cause more environmental damage to correct than to leave in place or would result in substantial and widespread economic and social impact. (b)"

failed

SENATE NATURAL RESOURCES
EXHIBIT NO. 9
DATE 2-18-95
BILL NO. SB-252

Amendments to Senate Bill No. 252
First Reading Copy

Requested by Senator Tveit
For the Committee on Natural Resources

Prepared by Todd Everts
February 13, 1995

1. Title, lines 4 and 5.
Strike: "PROVIDING" on line 4 through "ZONES" on line 5
Insert: "CLARIFYING THE WATER QUALITY LAWS TO RECOGNIZE AND PROVIDE FOR GROUND WATER MIXING ZONES AT LEAST TO THE EXTENT OF THE PROPERTY OWNED OR CONTROLLED BY THE DISCHARGER"

2. Page 1.
Strike: lines 8 through 17

3. Page 1 , line 21 through page 2, line 10.
Strike: Section 1 in its entirety
Renumber: subsequent sections

4. Page 2.
Following: Line 17
Insert: "(3) "Controlled property" means the land area controlled by a discharger, through ownership, lease, or otherwise, within which the discharger controls beneficial uses of ground water."
Renumber: subsequent subsections

5. Page 3, lines 14 through 18.
Strike: subsection (14) in its entirety
Renumber: subsequent subsections

6. Page 5, line 15, 17, 18.
Strike: "and" through "zones"

7. Page 5, lines 16 and 17.
Strike: "providing" on line 16 through "(a)" on line 17
Insert: ", requiring"

8. Page 5, line 19.
Strike: "(i)"
Insert: "(a)"
Following: "size"
Insert: ", except that ground water mixing zones must extend from the point of

EXHIBIT NO. 9
DATE 2-18-95
BILL NO. SB-95

discharge down gradient to the discharger's controlled property boundary and may, in accordance with rules adopted by the board, extend further"

9. Page 5, line 20.
Strike: "(ii)"
Insert: "(b)"

10. Page 5, line 21.
Strike: "(iii)"
Insert: "(c)"

11. Page 5.
Strike: lines 22 through 28

12. Page 6, lines 21 through 23.
Strike: Section 4 in its entirety
Renumber: subsequent section

SENATE NATURAL RESOURCES
EXHIBIT NO. 10
DATE 2-18-95
BILL NO. SB-252

Amendments to Senate Bill No. 252
First Reading Copy

Requested by Senator Grosfield
For the Committee on Natural Resources

Prepared by Todd Everts
February 17, 1995

1. Page 2.
Following: Line 17
Insert: "(3) "Controlled property" means the land area controlled by a discharger at the time the permit was issued, through ownership, lease, or otherwise, within which the discharger controls beneficial uses of ground water."
Renumber: subsequent subsections

SENATE NATURAL RESOURCE
EXHIBIT NO. 11
DATE 2-18-95
BILL NO. SB-362

Amendments to Senate Bill No. 362
First Reading Copy

Requested by Senator Grosfield
For the Committee on Natural Resources

Prepared by Todd Everts
February 15, 1995

1. Page 2, line 4.
Following: "individuals"
Insert: "disposing"

SENATE NATURAL RESOURCES
EXHIBIT NO. 12
DATE 2-18-95
BILL NO. SB-362

Amendments to Senate Bill No. 362
First Reading Copy

Requested by Senator Tveit
For the Committee on Natural Resources

Prepared by Todd Everts
February 17, 1995

1. Page 2, line 2.
Following: "activities"
Insert: "at wells injecting fluids associated with oil and gas exploration and production"

SENATE NATURAL RESOURCES
EXHIBIT NO. 13
DATE 2-18-95
BILL NO. SB 362

Amendments to Senate Bill No. 362
First Reading Copy

For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 17, 1995

1. Title, line 5.
Strike: "SECTION"
Insert: "SECTIONS"
Following: "75-5-401"
Insert: "AND 75-5-605"

2. Page 1, lines 29 and 30.
Following: "other wastes" on line 29
Insert: "from the following activities or operations that discharge"
Strike: "from" on line 29 through "operations".
Insert: "that are not hydrologically connected to state surface waters"

3. Page 2, line 2.
Following: "activities"
Insert: "at wells injecting fluids associated with oil and gas exploration and production"

4. Page 2, lines 11 through 16.
Strike: "subsections (5)(i) through (5)(k) in their entirety"
Renumber: subsequent subsections

5. Page 2.
Following: line 28
Insert: "**Section 2.** Section 75-5-605, MCA, is amended to read:

"**75-5-605. Prohibited activity.** (1) It is unlawful to:

(a) cause pollution as defined in 75-5-103 of any state waters or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any state waters;

(b) violate any provision set forth in a permit or stipulation, including but not limited to limitations and conditions contained in the permit;

(c) site and construct a sewage lagoon less than 500 feet from an existing water well;

(d) cause degradation of state waters without authorization pursuant to 75-5-303;

(e) violate any order issued pursuant to this chapter; or

(f) violate any provision of this chapter.

(2) ~~It~~ Except for the discharges identified in 75-5-401(5), it is unlawful to carry on any of the following activities without a current permit from the department:

(a) construct, modify, or operate a disposal system which discharges into any state waters;

SENATE NATURAL RESOURCES
EXHIBIT NO. 13
DATE 2-18-95
BILL NO SB-362

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into any state waters; or

(c) discharge sewage, industrial wastes, or other wastes into any state waters.""

{*Internal References to 75-5-605:*
x 75-5-611 *x 75-5-632*}

SENATE NATURAL RESOURCES
EXHIBIT NO. 14
DATE 2-18-95
BILL NO. SB-362

Amendments to Senate Bill No. 362
First Reading Copy

Requested by Senator Tveit
For the Committee on Natural Resources

Prepared by Todd Everts
February 15, 1995

1. Page 2.
Following: line 22
Insert: "(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4)(a) through (4)(c)."
Renumber: subsequent subsections

SENATE NATURAL RESOURCES
EXHIBIT NO. 15
DATE 2-18-95
BILL NO. SB-330

Amendments to ~~House Bill~~ SB No. 330
First Reading Copy

Requested by Sen. Swysgood
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 14, 1995

1. Page 1, line 25.
Following: "~~parameter~~"
Insert: "for a parameter if that change is likely to affect a beneficial use"

2. Page 2, line 5.
Following: "means"
Insert: "all"

3. Page 2, lines 8 through 17.
Strike: "that" on line 8 through "activity" on line 17
Insert: ", except:
(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and
(b) surface waters that:
(i) are not capable of supporting any one of the designated uses for their classification; or
(ii) have zero flow or surface expression for more than 270 days during most years"

4. Page 4, line 18 through page 6, line 15.
Strike: section 2 in its entirety
Renumber: subsequent sections

5. Page 6, line 18.
Strike: "high quality"

6. Page 7, lines 28 through 30.
Strike: section 4 in its entirety

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SENATE NATURAL RESOURCES
EXHIBIT NO. 16
DATE 2-18-95
BILL NO. SB-330

Amendments to Senate Bill No. 330
First Reading Copy

Requested by Sen. Brooke
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 17, 1995

1. Page 2, lines 20 and 21.
Following: "~~on~~"
Insert: "has submitted oral or written comments on or a person who"

2. Page 7, lines 15 through 25.
Strike: subsection (6) in its entirety
Insert: "(6) Every 5 years, the department shall review authorizations to degrade state waters. To enable the department to adequately review authorizations as required under this section, the authorization holder shall revise the initial authorization application no sooner than 3 1/2 years and no later than 4 years after the date of the authorization or the date of the latest department review. The specific revised information required must be determined by the department. If, based on the review, the department determines that the standards and objectives of 75-5-303 or the rules adopted pursuant to 75-5-303 are not being met, it shall revoke or modify the authorization. A decision by the department to revoke or modify an authorization may be appealed to the board."

SENATE NATURAL RESOURCES
EXHIBIT NO. 17
DATE 2-18-95
BILL NO. SB-331

Amendments to Senate Bill No. 331
First Reading Copy

Requested by Sen. Beck
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 14, 1995

1. Title, line 5.
Strike: "RULES OR"
Insert: "TREATMENT"

2. Title, line 6.
Following: "ECONOMICALLY"
Insert: ", ENVIRONMENTALLY,"
Following: "FEASIBLE;"
Strike: "AND"

3. Title, line 7.
Strike: "75-5-201,"
Strike: "75-5-306,"
Strike: "75-5-611,"

4. Title, line 8.
Following: "MCA"
Insert: "; AND PROVIDING AN ~~EFFECTIVE~~ Immediate Effective DATE"

5. Page 1, line 25.
Following: "unenforceable."
Insert: "[Section 1], providing conditions for adoption of standards more stringent than federal standards, is not intended to prohibit the adoption of ground water quality standards."

6. Page 2, lines 1 and 2.
Strike: ":" on line 1 through "(a)" on line 2

7. Page 2, lines 4 and 5.
Strike: "; and" on line 4 through "75-5-307" on line 5

8. Page 2, line 10 through page 4, line 6.
Strike: section 2 in its entirety
Renumber: subsequent sections

9. Page 4, line 9.
Following: "applicant,"
Insert: "permittee, or person potentially liable under any state or federal environmental remediation statute,"

10. Page 4, line 23.
Following: "~~parameter~~"
Insert: "for a parameter if that change is likely to affect a beneficial use"

SENATE NATURAL RESOURCES
EXHIBIT NO. 17
DATE 2-18-95
BILL NO. SB-331

11. Page 5, line 7.
Strike: "(a)"

12. Page 5, lines 9 and 10.
Strike: subsection (10)(b) in its entirety

13. Page 5.
Following: line 15
Insert: "(13) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc."
Renumber: subsequent subsections

14. Page 5, line 19.
Strike: "(a)"

15. Page 5, lines 23 and 24.
Strike: subsection (14)(b) in its entirety

16. Page 6, line 26.
Following: "lagoons"
Insert: "used solely for treating, transporting, or impounding pollutants"

17. Page 7, line 16.
Following: "20"
Insert: ", following the time schedule of the lead agency"

18. Page 7, line 29 through page 8, line 4.
Strike: section 6 in its entirety
Renumber: subsequent sections

19. Page 8, line 10.
Strike: "intermittent" through "that"
Insert: "streams that, due to sporadic flow,"

20. Page 8, line 11.
Strike: "a viable fishery"
Insert: "an aquatic ecosystem that includes salmonid or nonsalmonid fish"

21. Page 8, lines 13 and 14.
Strike: "that" on line 13 through "feasible" on line 14
Insert: ", giving consideration to the economics of waste treatment and prevention. Standards adopted by the board must meet the following requirements:
(a) for ground water, the water quality criteria must be the maximum contaminant level for those parameters for which an maximum contaminant level, as found in 40 CFR, part 141, has been determined, except in the case of carcinogens. For carcinogens, the water quality criteria must be the more stringent of the maximum contaminant level, if any, or the value associated with an excess lifetime cancer risk level, assuming

continuous exposure, not to exceed 1 x 10-3 in the case of arsenic and 1 x 10-4 for other carcinogens.

(b) for measuring carcinogens in surface water, the water quality criteria for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1 x 10-3 in the case of arsenic and 1 x 10-4 for other carcinogens;

(c) for all metal parameters, the values used by the board as criteria for standards of water quality must be stated as dissolved concentrations; and

(d) criteria for the protection of aquatic life do not apply to ground water"

22. Page 9, lines 9 through 11.
Strike: "a" on line 9 through "liter" on line 11
Insert: "changes to ground water quality are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate at the boundary of the ground water mixing zone does not exceed:

(i) 7.5 milligrams per liter for nitrate sources other than domestic sewage;

(ii) 5.0 milligrams per liter for domestic sewage effluent discharged from a conventional septic system;

(iii) 7.5 milligrams per liter for domestic sewage effluent discharged from a septic system using level two treatment, which must be defined in the rules; or

(iv) 7.5 milligrams per liter for domestic sewage effluent discharged from a conventional septic system in areas where the ground water nitrate level exceeds 5.0 milligrams per liter primarily from sources other than human waste"

23. Page 9, line 25.
Strike: "acquires information"
Insert: "is presented with facts indicating"

24. Page 9, lines 26 and 27.
Strike: "60" on line 26 through "75-5-307" on line 27
Insert: "90 days, initiate rulemaking"

25. Page 10, lines 6 and 15.
Following: "economically"
Insert: ", environmentally,"

26. Page 10, line 14.
Following: "so"
Insert: "through rulemaking, for parameters likely to affect beneficial uses,"

27. Page 10, line 15.
Following: "feasible."
Insert: "Except for the technology-based treatment requirements set forth in 40 CFR, chapter I, subchapter N, minimum treatment may not be required to address the discharge of a

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parameter when the discharge is considered nonsignificant under rules adopted pursuant to 75-5-301."

28. Page 10, line 30 through page 11, line 8.
Strike: section 11 in its entirety
Renumber: subsequent sections

29. Page 11, lines 17 through 19.
Strike: "The" on line 17 through "waters" on line 19
Insert: "Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part and is not degradation if:
(i) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; or
(ii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters"

30. Page 12, line 6.
Following: "applications for"
Insert: "new"
Strike: "30"
Insert: "60"

31. Page 12, lines 8 and 9.
Strike: "deficiency" through "initial notice" on line 9
Insert: "major deficiency issues, based on the information submitted. The department and the applicant may extend these timeframes, by mutual agreement, by not more than 75 days"

32. Page 12, line 27.
Strike: "industrial or other"

33. Page 12, line 28.
Strike: ";"
Insert: ". Any placement of materials that is authorized by a permit issued by any state or federal agency is not a placement of wastes within the prohibition of this subsection."

34. Page 13, line 12 through 15, line 9.
Strike: section 15 in its entirety
Renumber: subsequent sections

35. Page 16, line 4.
Strike: "When"
Insert: "In an action"
Following: "account"
Insert: "and the court shall consider"

36. Page 16, line 9.

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Following: "amounts"
Insert: "voluntarily"

37. Page 16, lines 23, 26, and 27.
Following: "~~drainage,~~"
Insert: "drainage,"

38. Page 17, line 6.
Following: "~~drainage,~~"
Insert: "drainage,"

39. Page 17, line 8.
Following: "specification"
Strike: ";"
Insert: ". However, any facility reviewed by the department under Title 75, chapter 5, is not subject to the provisions of this section."

40. Page 17, lines 15 and 17.
Strike: "through 3"
Insert: "and 2"

41. Page 17.
Following: line 17
Insert: " NEW SECTION. **Section 17. Saving clause.** Section 75-5-614 does not affect proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 18. Effective date.** [This act] is effective on passage and approval."

DISCUSSION DRAFT -- 1

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA WATER QUALITY ACT; ESTABLISHING WATER QUALITY STANDARDS; REQUIRING THAT ~~RULES OR~~ TREATMENT STANDARDS BE ECONOMICALLY, ENVIRONMENTALLY, AND TECHNOLOGICALLY FEASIBLE; AND AMENDING SECTIONS 75-5-103, 75-5-106, ~~75-5-201,~~ 75-5-301, 75-5-302, 75-5-304, 75-5-305, ~~75-5-306,~~ 75-5-401, 75-5-403, 75-5-605, ~~75-5-611,~~ 75-5-614, 75-5-631, 75-5-636, AND 75-6-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, experience with implementation and enforcement of the Montana water quality statutes has revealed deficiencies in the statutes that have led to inefficiency and unfairness in administration and enforcement of the statutes; and

WHEREAS, those deficiencies can be addressed by selective amendment of the statutes.

STATEMENT OF INTENT

A statement of intent is required to provide guidance to the board of health and environmental sciences regarding rulemaking. The legislature confirms the policy of this state, as reflected in 75-5-101. It is concerned that implementation of the water quality laws has in the past been too dependent on assumptions and conjecture springing from experiences and circumstances from other states and has not been sufficiently based on the conditions and needs of our state. The legislature intends that, in promulgating rules under this bill, the board of health and environmental sciences should seriously consider the impact of proposed rules and that the rules should be adopted only on the basis of sound, scientific justification and never on the basis of projections or conjecture. The legislature is specifically concerned that water quality criteria must reflect concentrations that can be reliably measured, or the rules will, as

a practical matter, be unenforceable. [Section 1], providing conditions for adoption of standards more stringent than federal standards, is not intended to prohibit the adoption of ground water quality standards.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Standards more stringent than federal standards.** (1) In adopting rules to implement this chapter, the board may adopt rules that are more stringent than corresponding draft or final federal regulations, guidelines, or criteria if~~:~~

~~(a)~~ the board makes written findings, based on sound scientific or technical evidence in the record, which state that rules that are more stringent than corresponding federal regulations, guidelines, or criteria are necessary to protect the public health, beneficial use of water, or the environment of the state~~; and~~

~~(b) the action is taken pursuant to 75-5-307~~.

(2) The board's written findings must be accompanied by a board opinion referring to and evaluating the public health and environmental information and studies contained in the record that forms the basis for the board's conclusion.

~~NEW SECTION. Section 2. Standards of water quality. (1) Notwithstanding the provisions of [section 1], in formulating and adopting standards of water quality under 75-5-301(2) or in reviewing and revising standards of water quality under 75-5-301(3) the board shall comply with the following procedures:~~

~~(a) Except as provided in subsection (1)(b), the board shall use as standards of water quality values that are no more stringent than the values set forth in the following table:~~

~~Water Quality Criteria~~

Parameter	Human Health	Aquatic Life (Acute)	Aquatic Life (Chronic)
A. Metal Parameters (expressed in micrograms per liter)			
Aluminum		750	87
Antimony	6		
Arsenic	50	360	190
Beryllium	4		
Barium	2,000		
Cadmium	5	3.9*	1.1*
Chromium	100	16**	11**
Copper	1,300	18*	12*
Fluoride	4,000		
Iron	300		1,000
Lead	5	82*	3.2*
Manganese	50		
Mercury	2	2.4	0.012
Nickel	100	1,400*	160*
Selenium	50	20	5
Silver	50	4.1	
Thallium	2		
Zinc	5,000	120*	110*
B. Other Parameters (expressed in milligrams per liter)			
Nitrate	10		
Ammonia		25***	2.2***
pH	6 to 9 std. units		
Sulfate	1,800		

Notes: All metal parameters are stated as dissolved, and compliance must be measured using dissolved methods.

* Hardness dependent (value assumes hardness if 100)

** Hexavalent

*** Ammonia is pH and temperature dependent (value of pH

~~= 7; T = 10);~~

~~(b) For parameters not included in subsection (1)(a), the board shall use maximum contaminant levels as established under 40 CFR, part 141, as the standards of water quality for human health.~~

~~(c) For parameters not included in subsection (1)(a) and for which maximum contaminant levels have not been established, the board may formulate and adopt standards of water quality for human health that satisfy the following criteria:~~

~~(i) The values must be based on scientifically valid studies and derived in a manner consistent with draft or final federal regulations, guidelines, or criteria for assessing the health risks of environmental pollutants.~~

~~(ii) For carcinogens, the values must represent a concentration associated with an excess lifetime cancer risk level because of continuous lifetime exposure not to exceed 1 x 10^{-4}.~~

~~(iii) For systemic toxicants, the values must represent a concentration to which the human population, including sensitive subgroups, could be exposed on a daily basis without appreciable risk of deleterious effects during a lifetime.~~

~~(d) For all metal parameters not included in subsection (1)(a), the values used by the board as standards of water quality must be stated as dissolved concentrations.~~

~~(2) In formulating and adopting standards of water quality under 75-5-301(2) or in reviewing and revising standards of water quality under 75-5-301(3), the board may not use narrative statements for any parameter.~~

~~(3) For the purpose of subsection (1)(c)(iii), systemic toxicants must include toxic chemicals that cause effects other than cancer or mutation.~~

NEW SECTION. **Section ~~3.~~ 2. Site-specific standards of water**

quality for aquatic life. Notwithstanding any other provisions of this chapter, the board, upon application by a permit applicant, permittee, or person potentially liable under any state or federal environmental remediation statute, shall adopt site-specific standards of water quality for aquatic life, both acute and chronic, as the standards of water quality required under 75-5-301(2) and (3). The site-specific standards of water quality must be developed in accordance with the procedures set forth in draft or final federal regulations, guidelines, or criteria.

Section ~~4.~~ 3. Section 75-5-103, MCA, is amended to read:

"75-5-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(4) "Degradation" means a change in water quality that lowers the quality of high-quality waters ~~for a parameter~~ for a parameter if that change is likely to affect a beneficial use. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(5) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(7) "Effluent standard" means a restriction or prohibition on

quantities, rates, and concentrations of chemical, physical, biological, and other constituents ~~which~~ that are discharged into state waters.

(8) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(9) "High-quality waters" means state waters whose quality for a parameter is better than standards established pursuant to 75-5-301. All waters are high-quality water unless classified by the board within a classification for waters that are not suitable for human consumption or not suitable for growth and propagation of fish and associated aquatic life.

(10) ~~(a)~~ "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

~~(b) The term does not mean materials incorporated or placed into a structure, facility, or location authorized in a permit issued by a state or federal agency.~~

(11) "Interested person" means a person who has submitted oral or written comments on the department's preliminary decision regarding degradation of state waters~~,~~ pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(12) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(13) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

~~(13)~~(14) "Mixing zone" means an area established in a permit or

final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

~~(14)~~(15) ~~(a)~~ "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(b) The term does not mean materials incorporated or placed into a structure, facility, or location authorized in a permit issued by a state or federal agency.~~

~~(15)~~(16) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(16)~~(17) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(17)~~(18) "Person" means the state, ~~a~~ political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(18)~~(19) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(19)~~(20) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of state waters which exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor~~;~~ or the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other

substance into state water ~~which~~ that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife. A discharge, seepage, drainage, infiltration or flow ~~which~~ that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

~~(20)~~(21) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(21)~~(22) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(22)~~(23) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants ~~which~~ that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, ~~where~~ when practicable, a standard permitting no discharge of pollutants.

~~(23)~~(24) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground~~; however, this subsection~~.

(b) The term does not apply to:

(i) privately owned ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters ~~where~~ when the waters are used up within the irrigation or land application disposal system and the waters are not returned to ~~any other~~ state

waters.

~~(24)~~(25) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(25)~~(26) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(26)~~(27) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water."

Section ~~5.~~ 4. Section 75-5-106, MCA, is amended to read:

"75-5-106. Interagency cooperation -- enforcement authorization. (1) The council, board, and department may require the use of records of all state agencies and may seek the assistance of ~~such~~ the agencies. The department shall coordinate permit proceedings under this chapter with permit proceedings involving the same project conducted by the department of state lands under Title 82, chapter 4, and by the department of natural resources and conservation under Title 75, chapter 20, following the time schedule of the lead agency. State, county, and municipal officers and employees, including sanitarians and other employees of local departments of health, shall cooperate with the council, board, and department in furthering the purposes of this chapter, so far as is practicable and consistent with their other duties.

(2) The department may authorize a local water quality district established according to the provisions of Title 7, chapter 13, part 45, to enforce the provisions of this chapter and rules adopted under this chapter on a case-by-case basis. If a local water quality district requests the authorization, the local water quality district shall present appropriate documentation to the department that a person is violating permit requirements established by the department or may be causing pollution, as defined in 75-5-103, of state waters or placing or causing to be placed wastes in a location where they are likely to cause pollution of state waters. The board may adopt rules regarding the granting of enforcement authority to local water quality districts."

~~**Section 6.** 5. Section 75-5-201, MCA, is amended to read:~~

~~"**75-5-201. Board rules authorized.** (1) The board shall adopt rules for the administration of this chapter and shall ensure that requirements imposed by the rules are cost-effective and economically and technologically feasible.~~

~~(2) The board's rules may include a fee schedule or system for assessment of administrative penalties as provided under 75-5-611."~~

Section ~~7.~~ 5. Section 75-5-301, MCA, is amended to read:

"75-5-301. Classification and standards for state waters. Consistent with the provisions of ~~75-5-302 through 75-5-307 and~~ 80-15-201 and this chapter, the board shall:

(1) establish ~~and modify~~ the classification of all state waters in accordance with their present and future most beneficial uses, creating an appropriate classification for ~~intermittent or ephemeral streams that~~ streams that, due to sporadic flow,do not support ~~a viable fishery~~ an aquatic ecosystem that includes salmonid or nonsalmonid fish;

(2) formulate and adopt standards of water ~~purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention~~ quality ~~that are cost-effective and economically and technologically feasible~~, giving consideration to the economics of waste treatment and prevention. Standards adopted by the board must meet the following requirements:

(a) for ground water, the water quality criteria must be the maximum contaminant level for those parameters for which an maximum contaminant level, as found in 40 CFR, part 141, has been determined, except in the case of carcinogens. For carcinogens, the water quality criteria must be the more stringent of the maximum contaminant level, if any, or the value associated with an excess lifetime cancer risk level, assuming continuous exposure, not to exceed 1 x 10-3 in the case of arsenic and 1 x 10-4 for other carcinogens;

(b) for measuring carcinogens in surface water, the water quality criteria for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1 x 10-3 in the case of arsenic and 1 x 10-4 for other carcinogens;

(c) for all metal parameters, the values used by the board as criteria for standards of water quality must be stated as dissolved concentrations; and

(d) criteria for the protection of aquatic life do not apply to ground water;

(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this chapter, revise established classifications of waters and adopted standards of water ~~purity and classification~~ quality;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically

identified~~,~~ and requiring that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

(a) provide a procedure for department review and authorization of degradation;

(b) establish criteria for the following:

(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality; ~~and~~

(c) establish criteria for determining whether a proposed activity or class of activities will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

(i) equates significance with the potential for harm to human health or the environment;

(ii) considers both the quantity and the strength of the pollutant;

(iii) considers the length of time the degradation will occur; ~~and~~

(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.

~~(d) provide that a domestic septic system and drain field that meets the minimum state standards results in nonsignificant changes to water quality and is not required to undergo review under~~

~~75-5-303(3) unless the predicted nitrate contamination at the end of the drain field exceeds 10 milligrams per liter~~ changes to ground water quality are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate at the boundary of the ground water mixing zone does not exceed:

(i) 5.0 milligrams per liter for domestic sewage effluent discharged from a conventional septic system;

(ii) 7.5 milligrams per liter for domestic sewage effluent discharged from a septic system using level two treatment, which must be defined in the rules; or

(iii) 7.5 milligrams per liter from sources other than human waste.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).

(7) adopt rules to implement this section."

Section ~~8.~~ 6. Section 75-5-302, MCA, is amended to read:

"75-5-302. Revised classifications not to lower water quality standards -- exception. In revising classifications or standards or in adopting new classifications or standards, the board may not so formulate standards of water ~~purity~~ quality or classify ~~any~~ state water as to lower ~~any~~ the water quality standard applicable to ~~any~~ state water below the level applicable under the classifications and standards adopted except upon a finding that a particular state water has been classified under a standard or classification of water quality that is higher than the actual water quality that existed at

the time of classification and only if the action is taken pursuant to 75-5-307. When the board or department ~~acquires information~~ is presented with facts indicating that a body of water is misclassified, the board shall, within ~~60 days of acquiring the information, take action pursuant to 75-5-307~~ 90 days, initiate rulemaking to correct the misclassification."

Section ~~9.~~ 7. Section 75-5-304, MCA, is amended to read:

"75-5-304. Adoption of standards -- pretreatment, effluent, performance. (1) The board shall:

(a) adopt pretreatment standards for wastewater discharged into a municipal disposal system~~,~~;

(b) adopt effluent standards as defined in 75-5-103~~,~~;

(c) adopt toxic effluent standards and prohibitions~~,~~; and

(d) establish standards of performance for new point source discharges.

(2) In taking action under subsection (1), the board shall ensure that the standards are cost-effective and economically, environmentally, and technologically feasible."

Section ~~10.~~ 8. Section 75-5-305, MCA, is amended to read:

"75-5-305. Adoption of requirements for treatment of wastes -- variance procedure -- appeals. (1) The board may establish minimum requirements for the treatment of wastes. For cases in which the federal government has adopted technology-based treatment requirements for a particular industry or activity in 40 CFR, chapter I, subchapter N, the board shall adopt those requirements by reference. To the extent that the federal government has not adopted minimum treatment requirements for a particular industry or activity, the board may do so through rulemaking, for parameters likely to affect beneficial uses, ensuring that the requirements are cost-effective and

economically, environmentally, and technologically feasible. Except for the technology-based treatment requirements set forth in 40 CFR chapter I, subchapter N, minimum treatment may not be required to address the discharge of a parameter when the discharge is considered nonsignificant under rules adopted pursuant to 75-5-301.

(2) The board shall establish minimum requirements for the control and disposal of sewage from private and public buildings, including standards and procedures for variances from the requirements.

(3) An applicant for a variance from minimum requirements adopted by a local board of health pursuant to 50-2-116(1)(i) may appeal the local board of health's final decision to the department by submitting a written request for a hearing within 30 days after the decision. The written request must describe the activity for which the variance is requested, include copies of all documents submitted to the local board of health in support of the variance, and specify the reasons for the appeal of the local board of health's final decision.

(4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6. Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The department shall base its decision on the board's standards for a variance.

(5) A decision of the department pursuant to subsection (4) is appealable to district court under the provisions of Title 2, chapter 4, part 7."

~~**Section 11.** Section 75-5-306, MCA, is amended to read:~~

~~**"75-5-306. Purer than natural unnecessary -- dams.** (1) It is not necessary that wastes be treated to a purer condition than the natural condition of the receiving stream~~ water ~~as long as the minimum~~

~~treatment requirements established under this chapter are met.~~

~~(2) For the purpose of issuing permits under this part, "Natural"~~ "natural" ~~refers to conditions or material present from runoff or percolation over which man has no control~~ the water quality ~~as of July 1, 1971, or~~ to runoff or percolation ~~from developed land where all reasonable land, soil, and water conservation practices have been applied. Conditions resulting from the reasonable operation of dams at July 1, 1971, are natural."~~

Section ~~12.~~ 9. Section 75-5-401, MCA, is amended to read:

"75-5-401. Board rules for permits. (1) The board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The board may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. ~~The board may not require a permit for the discharge of ground water that is not altered from its ambient quality by the discharger as long as existing uses are not impacted in the receiving state waters~~ Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part and is not degradation if:

(i) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; or

(ii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

(2) The rules ~~shall~~ may allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ~~insures~~ ensures that ~~such~~ the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules shall provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The board may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of disposal systems for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety."

Section ~~13.~~ 10. Section 75-5-403, MCA, is amended to read:

"75-5-403. Denial or modification of permit -- time for review of permit application. (1) The department shall review for completeness all applications for new permits within ~~30~~ 60 days of the receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all ~~deficiency issues, and the department may not in a later completeness notice raise an issue pertaining to the initial application that was not raised in the initial notice~~ major deficiencies, based on the information submitted. The department and

the applicant may extend these timeframes, by mutual agreement, by not more than 75 days. An application is considered complete unless the applicant is notified of a deficiency within the appropriate review period.

(2) If the department denies an application for a permit or modifies a permit, the department shall give written notice of its action to the applicant or holder and ~~he~~ the applicant or holder may request a hearing before the board, in the manner stated in 75-5-611, for the purpose of petitioning the board to reverse or modify the action of the department. ~~Such~~ The hearing ~~shall~~ must be held within 30 days after receipt of written request. After the hearing, the board shall affirm, modify, or reverse the action of the department. If the holder does not request a hearing before the board, modification of a permit ~~shall be~~ is effective 30 days after receipt of notice by the holder unless the department specifies a later date. If the holder does request a hearing before the board, ~~no~~ an order modifying ~~his~~ the permit ~~shall be~~ is not effective until 20 days after ~~he has received~~ receipt of notice of the action of the board.

~~(2) This section does not apply to any modification made in permit conditions at the time of reissuance, but only to those modifications made in existing permits during their terms.~~"

Section ~~14.~~ 11. Section 75-5-605, MCA, is amended to read:

"75-5-605. Prohibited activity. (1) It is unlawful to:

(a) cause pollution as defined in 75-5-103 of any state waters or to place or cause to be placed any ~~industrial or other~~ wastes where they will ~~in a location where they are likely to~~ cause pollution of any state waters~~;~~ . Any placement of materials that is authorized by a permit issued by any state or federal agency is not a placement of wastes within the prohibition of this subsection.

(b) violate any provision set forth in a permit or stipulation,

including but not limited to limitations and conditions contained in the permit;

(c) site and construct a sewage lagoon less than 500 feet from an existing water well;

(d) cause degradation of state waters without authorization pursuant to 75-5-303;

(e) violate any order issued pursuant to this chapter; or

(f) violate any provision of this chapter.

(2) It is unlawful to carry on any of the following activities without a current permit from the department:

(a) construct, modify, or operate a disposal system ~~which~~ that discharges into any state waters;

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into any state waters; or

(c) discharge sewage, industrial wastes, or other wastes into any state waters."

~~**Section 15.** Section 75-5-611, MCA, is amended to read:~~

~~**"75-5-611. Violation of chapter -- administrative actions and penalties -- notice and hearing.** (1) When the department has reason to believe that a violation of this chapter, a rule adopted under this chapter, or a condition of a permit or authorization required by a rule adopted under this chapter has occurred, it may have a written notice letter served personally or by certified mail on the alleged violator or the violator's agent. The notice letter must state:~~

~~(a) the provision of statute, rule, permit, or approval alleged to be violated;~~

~~(b) the facts alleged to constitute the violation;~~

~~(c) the specific nature of corrective action that the department requires;~~

~~(d) as applicable, the amount of the administrative penalty that~~

~~will be assessed by order under subsection (2) if the corrective action is not taken within the time provided under subsection (1)(e); and~~

~~(e) as applicable, the time within which the corrective action is to be taken or the administrative penalty will be assessed. For the purposes of this chapter, service by certified mail is complete on the date of receipt. Except as provided in subsection (2)(a)(ii), an administrative penalty may not be assessed until the provisions of subsection (1) have been complied with.~~

~~(2) (a) The department may issue an administrative notice and order in lieu of the notice letter provided under subsection (1) if the department's action:~~

~~(i) does not involve assessment of an administrative penalty; or~~

~~(ii) seeks an administrative penalty only for an activity that it believes and alleges has violated or is violating 75-5-605.~~

~~(b) A notice and order issued under this section must meet all of the requirements specified in subsection (1).~~

~~(3) In a notice and order given under subsection (1), the department may require the alleged violator to appear before the board for a public hearing and to answer the charges. The hearing must be held no sooner than 15 days after service of the notice and order, except that the board may set an earlier date for hearing if it is requested to do so by the alleged violator. The board may set a later date for hearing at the request of the alleged violator if the alleged violator shows good cause for delay.~~

~~(4) If the department does not require an alleged violator to appear before the board for a public hearing, the alleged violator may request the board to conduct the hearing. The request must be in writing and must be filed with the department no later than 30 days after service of a notice and order under subsection (2). If a~~

~~request is filed, a hearing must be held within a reasonable time. If a hearing is not requested within 30 days after service upon the alleged violator, the opportunity for a contested case appeal to the board under Title 2, chapter 4, part 6, is waived.~~

~~(5) If a contested case hearing is held under this section, it must be public and must be held in the county in which the violation is alleged to have occurred or, at the request of the alleged violator, in Lewis and Clark County.~~

~~(6) (a) After a hearing, the board shall make findings and conclusions that explain its decision.~~

~~(b) If the board determines that a violation has occurred, it shall also issue an appropriate order for the prevention, abatement, or control of pollution, the assessment of administrative penalties, or both.~~

~~(c) If the order requires abatement or control of pollution, the board shall state the date or dates by which a violation must cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution.~~

~~(d) If the order requires payment of an administrative penalty, the board shall explain how it determined the amount of the administrative penalty.~~

~~(e) If the board determines that a violation has not occurred, it shall declare the department's notice void.~~

~~(7) The alleged violator may petition the board for a rehearing on the basis of new evidence, which petition and the board may grant the petition for good cause shown.~~

~~(8) Instead of issuing an order, the board may direct the department to initiate appropriate action for recovery of a penalty under 75-5-631, 75-5-632, 75-5-633, or 75-5-635.~~

~~(9) (a) An action initiated under this section may include an administrative penalty of not more than $10,000 for each day of each~~

~~violation;. however~~ However, ~~the maximum penalty may not exceed $100,000 for any related series of violations.~~

~~(b) Administrative penalties collected under this section must be deposited in the general fund.~~

~~(c) In determining the amount of penalty to be assessed to a person, the department and board shall consider the criteria stated in 75-5-631(4) and rules promulgated under 75-5-201.~~

~~(d) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section.~~"

Section ~~16.~~ 12. Section 75-5-614, MCA, is amended to read:

"75-5-614. Injunctions authorized. (1) The department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for a violation ~~which~~ that would be subject to a compliance order under 75-5-613. An action under this subsection may be commenced in the district court of ~~the county in which the defendant is located or resides or is doing business or any~~ the county where a violation occurs or is threatened ~~if the defendant cannot be located in Montana~~, and the court ~~shall have~~ has jurisdiction to restrain the violation and to require compliance.

(2) The department may bring an action for an injunction against the continuation of an alleged violation of the terms or conditions of a permit issued by the department or any rule or effluent standard promulgated under this chapter or against a person who fails to comply with an emergency order issued by the department under 75-5-621 or a final order of the board. The court to which the department applies for an injunction may issue a temporary injunction if it finds that there is reasonable cause to believe that the allegations of the department are true, and it may issue a temporary restraining order

pending action on the temporary injunction."

Section ~~17.~~ 13. Section 75-5-631, MCA, is amended to read:

"75-5-631. Civil penalties -- injunctions not barred. (1) A person who violates this chapter or a rule, permit, effluent standard, or order issued under the provisions of this chapter ~~shall be~~ is subject to a civil penalty not to exceed $25,000. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy.

(3) The department shall institute and maintain ~~any~~ enforcement proceedings in the name of the state.

(4) ~~When~~ In an action seeking penalties under this section, the department shall take into account and the court shall consider the following factors in determining an appropriate settlement, if any, subsequent to the filing of a complaint:

(a) the nature, circumstances, extent, and gravity of the violation; and

(b) with respect to the violator, ~~his~~ the violator's ability to pay~~, any~~ and prior history of ~~such~~ violations, the economic benefit or savings, if any, to the violator resulting from the violator's action, amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation to waters of the state, and ~~any~~ other matters as justice may require."

Section ~~18.~~ 14. Section 75-5-636, MCA, is amended to read:

"75-5-636. Action by other parties. A person, association, corporation, or agency of the state or federal government may apply to the department protesting a violation of this chapter. The department shall make an investigation and make a written report to

the person, association, corporation, or agency ~~which~~ that made the protest. If a violation is established by the investigation of the department, appropriate enforcement action ~~shall~~ must be taken. If the investigation proves the protest to have been without reasonable cause, the department may seek recovery of investigative costs from the person who made the application."

Section ~~19.~~ 15. Section 75-6-112, MCA, is amended to read:

"75-6-112. Prohibited acts. A person may not:

(1) discharge sewage, ~~drainage,~~ drainage, industrial waste, or other wastes that will cause pollution of state waters used by a person for domestic use or as a source for a public water supply system or water or ice company;

(2) discharge sewage, ~~drainage,~~ drainage, industrial waste, or other waste into any state waters or on the banks of any state waters or into any abandoned or operating water well unless the sewage, ~~drainage,~~ drainage, industrial waste, or other waste is treated as prescribed by the board;

(3) build or operate any railroad, logging road, logging camp, or electric or manufacturing plant of any kind on any watershed of a public water supply system unless:

(a) the water supply is protected from pollution by sanitary precautions prescribed by the board; and

(b) a permit has been issued by the department after approval of detailed plans and specifications for sanitary precautions;

(4) commence construction, alteration, or extension of any system of water supply, water distribution, sewer, ~~drainage,~~ drainage, wastewater, or sewage disposal before ~~he~~ the person submits to the department necessary maps, plans, and specifications for its review and the department approves those maps, plans, and specifications~~;~~ . However, any facility reviewed by the department under Title 75,

chapter 5, is not subject to the provisions of this section.

(5) operate or maintain any public water supply system ~~which~~ that exceeds a maximum contaminant level established by the board unless ~~he~~ the person has been granted or has an application pending for a variance or exemption pursuant to this part;

(6) violate any provision of this part or a rule adopted under this part; or

(7) violate any condition or requirement of an approval issued pursuant to this part."

NEW SECTION. **Section ~~20.~~ 16. Codification instruction.** [Sections 1 ~~through 3~~ and 2] are intended to be codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to [sections 1 ~~through 3~~ and 2].

NEW SECTION. **Section 17. {standard} Saving clause.** Section 75-5-614 does not affect proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 18. {standard} Effective date.** [This act] is effective on passage and approval.

-END-

NATURAL RESOURCES
EXHIBIT NO. 18
DATE 2-14-95
BILL NO. SB-331

Concept amendments to SB 331 as amended by Sen. Beck (sb033102.amk)

Beck Amendment 10. Page 4, line 23.
Following: "~~parameter~~"
Insert: "for a parameter ~~if that change is likely to affect a beneficial use~~ likely to be affected by a proposed activity"

Beck Amendment 21. Page 8, lines 13 and 14.
Strike: "that" on line 13 through "feasible" on line 14
Insert: ", giving consideration to the economics of waste treatment and prevention. Standards adopted by the board must meet the following requirements:

(a) ~~for ground water, the water quality criteria must be the maximum contaminant level for those parameters for which an maximum contaminant level, as found in 40 CFR, part 141, has been determined, except in the case of carcinogens. For carcinogens, the water quality criteria must be the more stringent of the maximum contaminant level, if any, or the value associated with an excess lifetime cancer risk level, assuming continuous exposure, not to exceed 1 x 10-3 in the case of arsenic and 1 x 10-4 for other carcinogens.~~

~~(b)~~ for measuring carcinogens in surface water, the water quality ~~criteria~~ standard for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1 x 10-3 in the case of arsenic and 1 x ~~10-4~~ 10-5 for other carcinogens;

~~(c) for all metal parameters, the values used by the board as criteria for standards of water quality must be stated as dissolved concentrations; and~~

~~(d)~~ (b) ~~criteria~~ standards for the protection of aquatic life do not apply to ground water

(c) in no event may standards exceed the maximum contaminant levels obtained from 40 CFR part 141, as of [the effective day of this act]"

Beck Amendment 33. Page 12, line 28.
Strike: ";"
Insert: ". Any placement of materials that is authorized by a permit issued by any state or federal agency is not a placement of wastes within the prohibition of this subsection, if the agency's permitting authority includes provisions for review of the placement of materials to ensure that it will not cause pollution of state waters and the department has the opportunity to participate in the review of the activity."

SENATE NATURAL RESOURCES
EXHIBIT NO. 19
DATE 2-18-96
BILL NO SB-331

Amendments to Senate Bill No. 331
First Reading Copy

For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 17, 1995

1. Page 4, line 10.
Strike: "shall"
Insert: "may"

2. Page 4, line 13.
Following: "criteria"
Insert: "and must include a consideration of the affects of other routes of exposure"

SENATE NATURAL RESOURCES
EXHIBIT NO. 20
DATE 2-18-95
BILL NO. SB-391

Amendments to Senate Bill No. 391
First Reading Copy

Requested by Senator Grosfield
For the Committee on Natural Resources

Prepared by Todd Everts
February 17, 1995

1. Title, line 10.
Strike: "85-2-319,"

2. Title, line 11.
Strike: "AND A RETROACTIVE APPLICABILITY DATE"

3. Page 2.
Following: line 2
Insert: "(6) This section may not be construed to identify a minimum in streamflow for any purpose other than for encouraging voluntary solutions to season-specific and site-specific fishery resource problems.
(7) This section may not be construed in any manner that would adversely affect existing water rights."

4. Page 2, line 9.
Strike: "immediately"
Insert: "substantially"

5. Page 8, line 5 through page 9 line 9.
Strike: Section 5 in its entirety
Renumber: subsequent sections

6. Page 10.
Following: line 9
Insert: "(6) Subsection (5) is specifically and exclusively intended to encourage nonuse of existing water rights during specific seasons and at specific sites for the benefit of the fishery resource."
Renumber: subsequent subsection

7. Page 11.
Following: line 8
Insert: "(6) Subsection (5) is specifically and exclusively intended to encourage nonuse of existing water rights during specific seasons and at specific sites for the benefit of the fishery resource."
Renumber: subsequent subsection

8. Page 13, line 30 through line 1, page 14.
Strike: "under" on line 30 through "1]" on line 1, page 14

SENATE NATURAL RESOURCES
EXHIBIT NO. 20
DATE 2-18-95
BILL NO. SB-391

9. Page 14, lines 14 and 15.
Strike: lines 14 and 15 in their entirety

SENATE NATURAL RESOURCES
EXHIBIT NO. 21
DATE 2-18-95
BILL NO. SB-391

Amendments to Senate Bill No. 391
First Reading Copy

Requested by Sen. Grosfield
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 18, 1995

1. Page 2, line 5.
Strike: "In"
Insert: "Subject to the limitations of subsection (3) and in"

2. Page 2.
Following: line 13
Insert: "(3) Notwithstanding the provisions of 85-2-311(1)(f) and 85-2-402(2)(d), an applicant for a permit under this section does not have to show a possessory interest in the property where the water is to be put to beneficial use."

SENATE NATURAL RESOURCE
EXHIBIT NO. 22
DATE 2-18-95
BILL NO. SB-415

Amendments to Senate Bill No. 415
First Reading Copy

Requested by the Senate Natural Resources Committee
For the Committee on Natural Resources

Prepared by Todd Everts
February 18, 1995

1. Page 1.
Following: line 2
Insert: "By Request of the Senate Natural Resources Committee"

2. Page 2, line 10.
Strike: "Private parties are"
Insert: "A person is"

3. Page 2, line 14.
Strike: "and the grantor"

4. Page 2, lines 16 and 17.
Strike: "and" on line 16 through "grantor" on line 17

5. Page 2, line 20.
Strike: "and the grantor"

6. Page 2.
Following: line 26
Insert: "(f) The department shall expend these fund in a manner that maximizes the application of those funds to physically remediating the specific release."

7. Page 2.
Following: line 26
Insert: "(8) (a) A person may donate in-kind services to remediate a specific release at a specific facility pursuant to subsection (7). A person that donates in-kind services is not liable under 75-10-715 solely as a result of their contribution of in-kind services.
(b) A person who donates in-kind services with respect to a release or threatened release of a hazardous or deleterious substance is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss or damage to property, or economic loss.
(c) Immunity from liability, pursuant to subsection (b), does not apply in the

SENATE NATURAL RESOURCES
EXHIBIT NO. 22
DATE 2-18-95
BILL NO. SB-415

case of a release that is caused by conduct of the remedial action contractor that is negligent or grossly negligent or that constitutes intentional misconduct."

(d) This section does not minimize the liability, lessen the standard of liability, or otherwise shield from liability a potentially liable person under 75-10-715 or section 107 of CERCLA for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance."

DATE 2-18-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: _____

_____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Glenn Phillips	Dept Wildl. & Parks (support with amendments)	337		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 2-18-95 BILL NO. SB-344 NUMBER 1.

MOTION: TO PASS AMENDMENT #1

Passed 6-5

NAME	AYE	NO
VIVIAN BROOKE		X
B.F. "CHRIS" CHRISTIAENS		X
MACK COLE	X	
WILLIAM CRISMORE	X	
MIKE FOSTER		X
TOM KEATING	X	
KEN MILLER	X	
JEFF WELDON		X
BILL WILSON		X
LARRY TVEIT, VICE CHAIRMAN	X	
LORENTS GROSFIELD, CHAIRMAN	X	

SEN:1995
wp:rlclvote.man
CS-11

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 2-18-95 BILL NO. SB 344 NUMBER 2

MOTION: To Table The Bill

Passed 7-4

NAME	AYE	NO
VIVIAN BROOKE	X	
B.F. "CHRIS" CHRISTIAENS	X	
MACK COLE		X
WILLIAM CRISMORE		X
MIKE FOSTER	X	
TOM KEATING		X
KEN MILLER	X	
JEFF WELDON	X	
BILL WILSON	X	
LARRY TVEIT, VICE CHAIRMAN		X
LORENTS GROSFIELD, CHAIRMAN	X	

SEN:1995
wp:rlclvote.man
CS-11

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 2-18-95 BILL NO. SB-371 NUMBER 3

MOTION: AMENDMENT # sb 307104.gte

Passed 6-5

NAME	AYE	NO
VIVIAN BROOKE		X
B.F. "CHRIS" CHRISTIAENS		X
MACK COLE	X	
WILLIAM CRISMORE	X	
MIKE FOSTER	X	
TOM KEATING	X	
KEN MILLER		X
JEFF WELDON		X
BILL WILSON	X	
LARRY TVEIT, VICE CHAIRMAN	X	
LORENTS GROSFIELD, CHAIRMAN		X

SEN:1995
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MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 2-18-95 BILL NO. SB-252 NUMBER 4

MOTION: Motion To Table Bill

Failed 6-1

NAME	AYE	NO
VIVIAN BROOKE		
B.F. "CHRIS" CHRISTIAENS		
MACK COLE		X
WILLIAM CRISMORE		X
MIKE FOSTER		X
TOM KEATING		
KEN MILLER		X
JEFF WELDON	X	
BILL WILSON		
LARRY TVEIT, VICE CHAIRMAN		X
LORENTS GROSFIELD, CHAIRMAN		X

SEN:1995
wp:rlclvote.man
CS-11

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 2-18-95 BILL NO. SB-252 NUMBER 5

MOTION: DO PASS AS AMENDED

Passed 6-5

NAME	AYE	NO
VIVIAN BROOKE		X
B.F. "CHRIS" CHRISTIAENS		X
MACK COLE	X	
WILLIAM CRISMORE	X	
MIKE FOSTER	X	
TOM KEATING	X	
KEN MILLER	X	
JEFF WELDON		X
BILL WILSON		X
LARRY TVEIT, VICE CHAIRMAN	X	
LORENTS GROSFIELD, CHAIRMAN		X

SEN:1995
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CS-11

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 2-18-95 BILL NO. SB-362 NUMBER 6

MOTION: DO PASS AS AMENDED

PASSED 7-4

NAME	AYE	NO
VIVIAN BROOKE		X
B.F. "CHRIS" CHRISTIAENS		X
MACK COLE	X	
WILLIAM CRISMORE	X	
MIKE FOSTER	X	
TOM KEATING	X	
KEN MILLER	X	
JEFF WELDON		X
BILL WILSON		X
LARRY TVEIT, VICE CHAIRMAN	X	
LORENTS GROSFIELD, CHAIRMAN	X	

SEN:1995
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CS-11

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 2-18-95 BILL NO. SB 330 NUMBER 7

MOTION: To Adopt AMENDMENT sb033002.amk Item 2. 6-4

NAME	AYE	NO
VIVIAN BROOKE	X	
B.F. "CHRIS" CHRISTIAENS	X	
MACK COLE		X
WILLIAM CRISMORE		X
MIKE FOSTER		X
TOM KEATING		
KEN MILLER		X
JEFF WELDON	X	
BILL WILSON	X	
LARRY TVEIT, VICE CHAIRMAN	X	
LORENTS GROSFIELD, CHAIRMAN	X	

SEN:1995
wp:rlclvote.man
CS-11

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 2-8-95 BILL NO. SB 330 NUMBER 8

MOTION: To Adopt AMENDment No. sb033002.amk
Item 1.

FAILED 6-5

NAME	AYE	NO
VIVIAN BROOKE	X	
B.F. "CHRIS" CHRISTIAENS	X	
MACK COLE		X
WILLIAM CRISMORE		X
MIKE FOSTER		X
TOM KEATING		X
KEN MILLER		X
JEFF WELDON	X	
BILL WILSON	X	
LARRY TVEIT, VICE CHAIRMAN		X
LORENTS GROSFIELD, CHAIRMAN	X	

SEN:1995
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CS-11

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 2-18-95 BILL NO. SB-330 NUMBER 9

MOTION: DO PASS AS AMENDED

Passed 8-3

NAME	AYE	NO
VIVIAN BROOKE		X
B.F. "CHRIS" CHRISTIAENS	X	
MACK COLE	X	
WILLIAM CRISMORE	X	
MIKE FOSTER	X	
TOM KEATING	X	
KEN MILLER	X	
JEFF WELDON		X
BILL WILSON		X
LARRY TVEIT, VICE CHAIRMAN	X	
LORENTS GROSFIELD, CHAIRMAN	X	

SEN:1995
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MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 2-8-95 BILL NO. SB 331 NUMBER 10

MOTION: TO STRIKE AMENDMENT NO 21, Subsection ~~(e)~~

Failed 6-5

NAME	AYE	NO
VIVIAN BROOKE	X	
B.F. "CHRIS" CHRISTIAENS	X	
MACK COLE		X
WILLIAM CRISMORE		X
MIKE FOSTER		X
TOM KEATING		X
KEN MILLER		X
JEFF WELDON	X	
BILL WILSON	X	
LARRY TVEIT, VICE CHAIRMAN		X
LORENTS GROSFIELD, CHAIRMAN	X	

SEN:1995
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CS-11

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3-18-95 BILL NO. SB-331 NUMBER 11

MOTION: TO DO PASS AS AMENDED

PASSED 7-4

NAME	AYE	NO
VIVIAN BROOKE		X
B.F. "CHRIS" CHRISTIAENS		X
MACK COLE	X	
WILLIAM CRISMORE	X	
MIKE FOSTER	X	
TOM KEATING	X	
KEN MILLER	X	
JEFF WELDON		X
BILL WILSON		X
LARRY TVEIT, VICE CHAIRMAN	X	
LORENTS GROSFIELD, CHAIRMAN	X	

SEN:1995
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CS-11

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 2-18-95 BILL NO. SB-391 NUMBER 12

MOTION: To Table SB-391

FAILED 6-5

NAME	AYE	NO
VIVIAN BROOKE		X
B.F. "CHRIS" CHRISTIAENS	X	
MACK COLE	X	
WILLIAM CRISMORE		X
MIKE FOSTER	X	
TOM KEATING	X	
KEN MILLER		X
JEFF WELDON		X
BILL WILSON		X
LARRY TVEIT, VICE CHAIRMAN	X	
LORENTS GROSFIELD, CHAIRMAN		X

SEN:1995
wp:rlclvote.man
CS-11

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 2-18-95 BILL NO. SB-391 NUMBER 13

MOTION: TO DO PASS AS AMENDED

PASSED 7-4

NAME	AYE	NO
VIVIAN BROOKE	X	
B.F. "CHRIS" CHRISTIAENS	X	
MACK COLE		X
WILLIAM CRISMORE	X	
MIKE FOSTER		X
TOM KEATING		X
KEN MILLER	X	
JEFF WELDON	X	
BILL WILSON	X	
LARRY TVEIT, VICE CHAIRMAN		X
LORENTS GROSFIELD, CHAIRMAN	X	

SEN:1995
wp:rlclvote.man
CS-11

MINUTES

MONTANA
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **Rep. Dick Knox, Chairman,** on March 20, 1995, at 3:00 pm.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. David Ewer (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Paul Sliter (R)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SJR 15, SB 346, SB 347, SB 371
Executive Action: SB 386 Be Concurred In As Amended
SB 406 Be Concurred In As Amended

Tape 1, Side A

HEARING ON SJR 15

Opening Statement by Sponsor:

SEN. JOHN HARP, Senate District 42, Kalispell, said SJR 15 urges the flexibility and timeliness by the U. S. Environmental Protection Agency (EPA), particularly the Region 8 office, in consideration of regulations and pending or future applications for primacy for certain environmental programs affecting air quality, underground storage tanks, waste oil and the management of hazardous and other wastes produced in Montana. **SEN. HARP** said he was particularly interested in the bill because part of his Senate District includes the Columbia Falls Aluminum Plant and it's running out of the ability to take care of its hazardous waste materials. Unless there are changes made in EPA'S Region 8, the hazardous waste materials may have to be transferred to Arkansas which would cost the plant millions of dollars.

Proponents' Testimony:

Allen Barkley, External Affairs Manager, Columbia Falls Aluminum Plant, said SJR 15 doesn't weaken any environmental policies, it just urges EPA to execute their responsibilities as quickly as possible.

Tom Daubert, Ash Grove Cement Company, said it has been about 17 months since EPA in Denver has had Montana's application for primacy. All EPA needs to do is compare Montana's regulations with their regulations to make sure they are the same, or if not the same, Montana's would be stricter. To date, EPA has not done that. SJR 15 just urges EPA to consider applications for primacy in a more timely manner. If Montana can get primacy it would make the permitting process simpler because there would be only one application process and EPA in Denver wouldn't have to be dealt with.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

REP. HAL HARPER asked **SEN. HARP** if it was true that the quantity of waste generated in Montana has increased and if so, why hasn't Montana looked at programs like other states have to limit the growth of hazardous waste. **SEN. HARP** said he thought a lot of Montana's hazardous waste classifications have continued to grow because of federal legislation.

Closing by Sponsor:

SEN. HARP closed.

HEARING ON SB 346

Opening Statement by Sponsor:

SEN. GARY FORRESTER, Senate District 8, Billings, said SB 346 was requested by the Department of Health and Environmental Sciences (DHES). There has been 20 years of conflict in Montana because of the inability to clean up mine wastes or clean up the waters that are polluted. SB 346 addresses those problems.

Proponents' Testimony:

Steve Pilcher, DHES, said the department has requested consideration of SB 346 in an attempt to deal with the problem it currently faces in administering the Montana Water Quality Act. The Water Quality Act requires the Board of Health and Environmental Sciences (BHES) to classify all waters in Montana according to present and future beneficial uses and then to establish quality levels that must be maintained. When Montana's streams were classified in the mid-1960s the available water quality information was limited so assumptions and generalizations had to be made. Localized water quality problems such as those created by past mining activities were not recognized and identified. The department is now finding a number of stream segments that do not meet the assigned classification, probably never did and hopefully will sometime in the future. The best local example would be the Upper Blackfoot River near Lincoln where historic mining activities in the area of Mike Horse, Anaconda and Paymaster mines have seriously affected the quality of the Blackfoot River. When the BHES conducted its classification hearings, the upper segment of the river was given the same classification as the lower river which has good water quality. SB 346 represents a realistic way to address these water quality problems. Currently, the board can reclassify streams that are shown to have been misclassified, but that just means they are put in another category but no action will be taken. SB 346 would allow the board to recognize that the streams may have been misclassified, but more importantly, it would put the board on a schedule for overall improvements. The bill requires the restoration of a stream segment so it will support the beneficial uses in a time period not to exceed 20 years. The department, through its permitting responsibilities and authorities, would ensure that conditions and limitations are imposed on activities and on any discharges into the stream segment to ensure that it achieves the desired improvements in water quality conditions. The bill does not allow people to further degrade state waters, it merely recognizes that those waters were impaired in the past and puts the department on a plan to restore them to beneficial uses.

Gary Langley, Executive Director, Montana Mining Association, urged the committee to support SB 346.

Larry Brown, Agricultural Preservation Association, supported the SB 346 for the same reasons **Mr. Pilcher** stated.

John Davis, Atlantic Richfield Company, supported SB 346.

Gail Abercrombie, Montana Petroleum Association, supported SB 346.

Opponents' Testimony:

Jim Barrett, Beartooth Alliance, Cooke City, said SB 346 is an attempt by DHES to accommodate mining interests who are faced with acquiring permits to discharge pollutants into streams that are presently impaired in one or more of the parameters which determine their classification. Written testimony. **EXHIBIT 1**

Jim Jensen, Executive Director, Montana Environmental Information Center, opposed SB 346.

Florence Ore, Northern Plains Resource Council. Written testimony. **EXHIBIT 2**

Brian Kuehl, Greater Yellowstone Coalition, said the coalition supported the intent of the bill however, they felt that a mechanism exists under existing law and is not adequately being used. The mechanism is the permitting system established for discharge permits. The coalition and a number of other conservation groups have filed suit against Crown Butte Mining Company requesting it to get a permit to clean up historic conditions at the mine. Rather than requiring that permit, the Water Quality Division has been procrastinating and no permit has been issued. The last thing that is needed is more rulemaking that will take another year. Permits should be issued and treatment should be required.

Tape 1, Side 2

Debbie Smith, Sierra Club, supported the intent of SB 346 but it is inconsistent with the Clean Water Act. Under the Clean Water Act, before the state can change any water quality standard, it has to go through a use attainability analysis which requires examination of certain factors that are stated in the Environmental Protection Agency's (EPA) regulations and it also requires public input. After that has been accomplished, the state can reclassify the water quality standards. The bill allows a party to get a petition and require temporary standards to be put in place. Currently, the federal law has a mandatory proactive requirement placed on the state to identify all areas of surface waters where water quality standards aren't being met and to determine the total maximum daily load. All future permits have to take into account restricted or reduced pollutant discharges that stay within the total maximum daily load. Presumably, that could be done through the temporary modification standards except that the bill does not require the board to do

it. The bill merely allows the board to do so, if it so chooses, upon a petition by an interested party.

Informational Testimony: None

Questions From Committee Members and Responses:

REP. JON ELLINGSON asked **Mr. Pilcher** to explain how SB 346 would improve Montana's water quality. **Mr. Pilcher** said as an example, the department is interested in the improvement of the water quality in the Upper Blackfoot River. The department has been working with the landowners in that area. A permit has been issued and is for a five year period. The permit is the first phase of necessary improvements and allows the company to begin to make improvements to the poor water quality. Additional permits will be needed, each having more stringent effluent limits, until the desired goal of restoring beneficial uses to the stream segment has been met. This approach, as outlined in SB 346, would allow the department to accomplish that goal. The company would give the department information that showed the stream was not supporting beneficial uses. The company would submit a plan to achieve compliance and the plan would be reviewed by DHES and adopted by BHES. Each permit would have to conform to the compliance plan. **REP. ELLINGSON** asked **Mr. Pilcher** why that couldn't be accomplished without SB 346. **Mr. Pilcher** said generally, water discharge permits are to include effluent limits that are protective of water quality in-stream standards. The permit that has been issued for the Mike Horse Mine realize global values and wouldn't be in total compliance with surface water quality standards. It recognizes that further permits will have to be issued in order to achieve complete compliance. **Mr. Pilcher** said he was concerned that the procedure might not be legitimate. SB 346 would legitimize and clarify this procedure.

REP. ELLINGSON asked **Ms. Smith** if she thought the department had the authority to issue the appropriate permit now. **Ms. Smith** said there are three options that DHES can pursue. When water quality standards are not being met permits can be denied. DHES can change the water quality standards by going through the use attainability analysis to lower the water quality standards so that within the five year timeframe those standards could be met. It is possible that even if the standards were lowered the permit requirements couldn't be met. In that case, the permit could be denied. Once the analysis was completed, the department would know what discharge limits could be allowed. Pollutant parameters would have to be really racheted down at that time. **REP. ELLINGSON** asked **Ms. Smith** what the impact of a permit denial would be for a mining company. **Ms. Smith** said ordinarily, if the permit application is denied and the applicant continues to discharge he would be in violation of the state and federal Acts. In Montana the state could sue the applicant in state court for discharging without a permit. Citizens could sue the applicant in federal court and the fine would be 25,000 a day, until the applicant is in compliance.

REP. BOB RANEY asked **Mr. Pilcher** if the bill allowed lower parameters for some things while other things were being improved. **Mr. Pilcher** said the intent of the bill is to allow cleanup to take place and to implement measures that will result in long term improved water quality conditions. For example, if a company puts in some ponds that might be necessary to allow treatment of metals, the construction of the ponds may result in some increase in sediment. That may be a short term impact that is a part of a longer term permanent solution.

REP. HAL HARPER said he noticed in the statement of intent that no discharge would allow water quality to become worse than the water was prior to the discharge and asked **SEN. FORRESTER** if he would be willing to insert that statement in the bill. **SEN. FORRESTER** said section 2 of the bill covers that statement. **REP. HARPER** noted that section 3, subsection (5) also states that a temporary modification of water quality standard may not result in adverse impacts to existing beneficial uses, which is close but is not quite the same thing. The statement of intent talks about water quality becoming worse than the water was prior to discharge. **SEN. FORRESTER** said **REP. HARPER's** intent was to clarify he had no objection but if he had some ulterior motive he would object. **REP. HARPER** assured **SEN. FORRESTER** that he had no ulterior motive.

Tape 2, Side A

REP. RANEY asked **Mr. Jensen** to explain his objection to SB 346 a little more clearly. **Mr. Jensen** said the problem is that the Water Quality Bureau has for more than two decades, refused to enforce the Water Quality Act on discharges like the Mike Horse Mine until enough political and legal pressure was put on it to enforce the law. The bill would allow a company like American Smelting and Mining Company (ASARCO) to pollute the Blackfoot River for another twenty years without having to meet the standards in law. That would be a total of 42 years because it has already been polluting the river for 22 years before it got the permit. If it were impossible for ASARCO to meet the standards, as **Mr. Pilcher** has said, it would make the permit fraudulent.

REP. HARPER asked **Abe Horpestad, DHES,** if the department can't get companies to clean up the water in five years under the permit, why would it be able to in 20 years. **Mr. Horpestad** said because some things take more than five years. There have been statements about total maximum daily loads and wasteload allocations. The implicit assumption in those statements is that they can be taken care of tomorrow and they can't because the department doesn't have the manpower. **REP. HARPER** asked **Mr. Horpestad** what permit Mike Horse Mine was using to discharge, prior to getting the five year permit. **Mr. Horpestad** said Mike Horse didn't have a permit prior to the five year permit. **REP. HARPER** asked **Mr. Horpestad** what would happen when the five year permit expires if the law doesn't change. **Mr. Horpestad** said the

company can demonstrate through the development of site specific criteria that it does not need to achieve Gold Book numbers to protect their uses. If the company can meet the site specific standards, the limits in the permit would be modified to reflect those numbers. If the company doesn't meet the permit limits, it is subject to the penalty provisions of the law. If the company could establish that the water body was originally misclassified and should be in the "I" class, the permit limits would have to be changed to reflect the "I" class standards for water.

Closing by Sponsor:

SEN. FORRESTER SB 346 will spark progress on cleaning up the streams and urged the committee to support it without allowing a lot of amendments that would make it unworkable.

HEARING ON SB 347

Opening Statement by Sponsor:

SEN. BILL CRISMORE, Senate District 41, Libby, said SB 347 allows the Department of State Lands (DSL) to negotiate reciprocal access to facilitate the management of isolated state forest lands. The department would not be required to conduct an environmental assessment of activities on adjoining private land which may be facilitated by granting an easement across state lands. The bill is a clarification of existing DSL policies. SB 347 is needed to protect DSL from lawsuits.

Proponents' Testimony:

Cary Hegreberg, Montana Wood Products Association, said much of the forest land in western Montana is checkerboard ownership among the federal government, State of Montana, corporate landowners and nonindustrial landowners. Not only do private landowners need to secure access across state and federal lands to access their land, but the reverse is true as well. SB 347 is a good neighbor bill. It allows the state and private landowners to negotiate reciprocal access agreements without going through a lot of legal red tape.

Ronald Buentemeier, Lands Manager, F. H. Stoltze Land and Lumber Co., Columbia Falls. Written testimony. **EXHIBIT 3**

Tape 2, Side B

Lech Szumera, Supervisor, Access for Plum Creek Timber Company, Missoula. Written testimony. **EXHIBIT 4**

Robert Spokley, Landowner, Western Montana, supported SB 347.

Nancy Kostman, Montana Forest Products, Kalispell, supported SB 347.

Bud Clinch, Commissioner, Department of State Lands (DSL), said the checkerboard ownership of state land across the State of Montana creates a whole array of complexities associated with the management of it. SB 347 defines and directs the department to negotiate reciprocal access agreements between private landowners and other agencies. The Forest Service and Bureau of Land Management will also be likely candidates to enter into reciprocal access agreements with the department. In granting access, the department is not required to analyze or consider the potential impacts of activities that may occur on private or federal lands in conjunction with or as a result of granting access. There is an amendment to SB 347 that gives the Board of State Lands the authority to waive all or a portion of the survey requirements for an easement. **EXHIBIT 5**

Opponents' Testimony:

Debbie Smith, Sierra Club, said SB 347 authorizes DSL to circumvent MEPA in areas where it should be applying MEPA now. MEPA does not allow the segmentation of a project and requires a cumulative impact analysis on a reciprocal access agreement.

Jim Jensen, Montana Environmental Information Center, opposed SB 347 for the same reasons **Ms. Smith** stated.

Informational Testimony: None

Questions From Committee Members and Responses:

REP. AUBYN CURTISS asked **Mr. Clinch** if the department would still have the discretion to deny access if it perceives a problem exists even if SB 347 passes. **Mr. Clinch** said the bill states that the department may negotiate reciprocal access, which means the department will only do that when it is in the best interest of the state trust as well as the applicant. It is the department's opinion that SB 347 does not circumvent MEPA. In reviewing and making a decision on an application for easement, the department does implement the MEPA process.

REP. CLIFF TREXLER asked **Mr. Clinch** if the access problem was universal across the state. **Mr. Clinch** said the access problem is somewhat universal across the state. SB 347 is particularly for the management of isolated forest lands.

Tape 3, Side A

REP. DAVID EWER asked **Mr. Clinch** if it was true that the department doesn't consider the impacts when reviewing easement requests that may occur on properties that are not state land. **Mr. Clinch** said that was correct and that is because, in many instances, those are totally unknown activities. The magnitude of an analysis the state would have to conduct for an easement request from an oil and gas pipeline, a transmission line, or a highway project would be incredible. The decision not to

consider the impacts when reviewing easement requests is founded on the department's interpretation and reliance on the Winnebego Eighth Circuit Court Decision. **REP. EWER** asked **Mr. Clinch** if that was the way other state agencies view the consideration of impacts as far as MEPA is concerned. **Mr. Clinch** said other state agencies might have different opinions on how they are implementing and interpreting it, recognizing that each of those agencies has different roles. DSL is the lead agency in terms of being a land management agency. DSL does a MEPA analysis on the impacts that an application has on state land. **REP. EWER** said he thought it would be somewhat naive of the department not to do an impact analysis if it knows something is going to occur on a piece of property that may cause significant water degradation. **Mr. Clinch** said there might be some cases where an impact analysis may be necessary and those would be looked at on an individual basis. That is why the language in the bill states that the department may do an impact analysis.

Closing by Sponsor:

SEN. CRISMORE said he was sure that someone would want to amend section one and take out subsection (2) of the bill. If that happens, the bill may as well be thrown away because that is the bill. **SEN. CRISMORE** urged the committee to support SB 347.

HEARING ON SB 371

Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, Senate District 13, Big Timber, said SB 371 is an Act to define outstanding resource waters and set up a process for further designation of those waters. It would also identify nonsignificant activities. SB 371 is the result of SB 401 that was passed last session. The Board of Health and Environmental Sciences (BHES) went through an extensive rulemaking process and decided to adopt a rule that gives it the authority to designate outstanding resource waters. The problem is that there is no statutory authorization for that within SB 401 or anywhere else. The Environmental Protection Agency (EPA) has rules for outstanding resource waters, but in the Clean Water Act that authorizes the rules of the EPA, there is no mention of statutory authority for outstanding resource waters. SB 371 gives clear authority to the board to define and designate outstanding resource waters. The bill is purposely restrictive because once a body of water is designated as an outstanding resource water, the kinds of activities that can take place are severely limited. No authorizations to degrade the waters can be issued. **SEN. GROSFIELD** reviewed the bill with the committee.

Proponents' Testimony:

John Bloomquist, Montana Stockgrowers Association, said the bill reflects very prudent aspects of water quality policy and urged the committee to support SB 371.

Don Allen, Montana Wood Products Association, said SB 371 establishes a process that is very important in the designation of outstanding resource waters and the association supported it.

Lance Clark, Montana Realtors Association, supported SB 371.

Tape 3, Side B

Mike Murphy, Montana Water Resources Association, said there are waters in Montana that deserve the recognition of outstanding resource waters, therefore he supported SB 371.

Gail Abercrombie, Executive Director, Montana Petroleum Association, said the procedures set in SB 371 for designation of outstanding resource waters are well delineated, make sense and have safeguards against petitions to stop a project which otherwise could not be stopped. **Ms. Abercrombie** urged the committee to support SB 371.

Jean Johnson, Executive Director, Montana Outfitters and Guides Association, offered an amendment to SB 371 which had been approved by **SEN. GROSFIELD.** The amendment would insert "hunting" into the list of nonsignificant activities. **Ms. Johnson** said although she couldn't speak for back country horsemen, she believed that they would also appreciate the amendment. In some areas, people don't like to see horses in the wilderness. In western Washington, the horses have to wear diapers, so it is important to have "hunting" added to the list. **EXHIBIT 6**

Larry Brown, Agricultural Preservation Association, supported SB 371.

David Owen, Montana Chamber of Commerce, supported SB 371.

Peggy Trenk, Western Environmental Trade Association, supported SB 371.

Chris Racicot, Montana Building Industry Association, supported SB 371.

Brian Kuehl, Greater Yellowstone Coalition. Written testimony. **EXHIBIT 7**

Opponents' Testimony:

Florence Ore, Northern Plains Resource Council. Written testimony. **EXHIBIT 8**

Informational Testimony: None

Tape 4, Side A

Questions From Committee Members and Responses:

REP. DAVID EWER said before the last session, when SB 401 was adopted, it was his understanding that there was something called "high quality water" and now it is going to be called "outstanding resource water." He asked **Steve Pilcher, DHES,** if he agreed that there isn't any difference between the two. **Mr. Pilcher** said in his opinion, there is a difference between the two terms. High quality water is of better quality than is required by surface quality water standards. Outstanding resource waters would obviously be those waters that met the test of high quality but they receive further protection. The BHES could previously allow a change in high quality water. The board would not be allowed to approve a change if those waters also met the test of outstanding natural resource waters.

REP. HAL HARPER asked **SEN. GROSFIELD** if the person that petitions the board for rulemaking to classify waters as outstanding resource waters, would have to pay for the environmental impact statement (EIS). **SEN. GROSFIELD** said an EIS would only be required when classification as an outstanding resource water may cause significant adverse impacts to the environment, including significant adverse impacts to social or economic values. Normally an EIS is not required under MEPA if only social or economic values are impacted. **REP. HARPER** said on page 6, line 8 of the bill, it states that the board could deny an accepted outstanding resource water classification petition if it finds that based on information available to the board from the EIS or otherwise, the approval would cause significant adverse environmental, social or economic impacts, He asked **SEN. GROSFIELD** if someone wanted to develop a facility because there was an ore body along the water course would the board find that sufficient cause to deny the petition. **SEN. GROSFIELD** said that would be something that the board and the Legislature would have to consider.

REP. EWER referred to **Mr. Pilcher's** definition of the difference between high quality water and outstanding resource water and asked **SEN. GROSFIELD** if he agreed with that definition. **SEN. GROSFIELD** said there can not be an authorization granted to degrade outstanding resource waters. **REP. EWER** said on page 5, subsection (a) states that the department may not grant an authorization to degrade under 75-5-303 in outstanding resource waters; or (b) grant an authorization to degrade if that authorization would cause significant degradation, as defined by board rules adopted under 75-5-301(5), in outstanding resource waters. He asked **SEN. GROSFIELD** why 75-5-301(5) wasn't used for both subsections. **SEN. GROSFIELD** said 75-5-301(5) is the authorization for the nonsignificant criteria. 75-5-303

addresses self-determination, which means that a person can determine that he is not degrading under that statute.

Tape 4, Side B

REP. BOB RANEY said he was concerned with the statement on page 9, lines 10, 11, and 12 that existing activities that are nonpoint sources of pollution as of April 29, 1993 are non-significant. There are a lot of nonpoint sources of pollution activities going on that are presently having significant impacts upon the waters. He asked **REP. GROSFIELD** if those sources would be grandfathered in. **REP. GROSFIELD** said the amendment offered by **Ms. Ore** would negate that. April 29, 1993 is the date of the Nondegradation Act. There has to be a date in order not to retroactively legislate. The conclusion shouldn't be drawn that grandfathering nonpoint sources of pollution activities means that it will remain that way forever. The bill is not in a vacuum.

REP. ROBERT STORY said he attended a hearing on the rules for nondegradation and there was talk about the rules applying to additional sources nonpoint sources of pollution. He asked **Abe Horpestad, DHES,** to comment. **Mr. Horpestad** said if a person was engaged in a nonpoint source of pollution activity and hasn't changed or increased that activity, and it was done before April 29, 1993, it would not be a new or increased source and would not be subject to the nondegradation rule. It would be subject to water quality standards.

Closing by Sponsor:

SEN. GROSFIELD said SB 371 is a restrictive bill. It won't be easy to designate outstanding resource waters. However, there are waters that deserve to be designated as outstanding resource waters and SB 371 will do that.

EXECUTIVE ACTION ON SB 386

Motion: REP. BILL TASH MOVED SB 386 BE CONCURRED IN.

Motion/Vote: REP. SCOTT ORR MOVED AMENDMENTS TO SB 386. EXHIBIT 9 Voice vote was taken. **Motion carried unanimously.**

Motion: REP. PAUL SLITER MOVED SB 386 BE CONCURRED IN AS AMENDED.

Discussion:

REP. BOB RANEY said he was going to vote against the bill because it is a giant step backwards in the underground storage tank program that has been moving along well for almost a decade, which was to ensure that there wouldn't be tanks underground that were leaking. It was done for the protection of groundwater.

The smaller storage tanks are more prone to rust through and leak than the larger tanks.

REP. BILL TASH said the purpose of the bill is to get the tanks out of the ground and to take advantage of the extended window of opportunity that will clean up the environment, not to put them back into the ground.

REP. DANIEL FUCHS said SB 386 gives people the incentive to get the tanks out of the ground.

REP. AUBYN CURTISS said this is one more instance where Montana's agencies have adopted rules more stringent than EPA standards are. It has cost the state a lot of money and it is going to cost a lot more, even if SB 386 is passed.

REP. JON ELLINGSON said he wouldn't vote for SB 386 because he didn't understand where it would give anyone the incentive to remove the underground tanks. The only incentive to be found in the bill is that after the period of time elapses there wouldn't be any reimbursement for tank removal.

REP. DAVID EWER said he understood that reimbursement was only for tanks that were leaking and didn't think that was an incentive to take the tanks out, it would be an incentive to keep them in.

REP. KARL OHS asked **REP. EWER** to explain why he thought it would be an incentive to leave the tanks in the ground if they were leaking. **REP. EWER** said under current law the underground tanks are supposed to be taken out. SB 386 lets people do what they want. **REP. OHS** said SB 386 is only effective for a certain period of time. The tanks are registered and the department knows where they are. **REP. EWER** said the current law requires the removal of underground storage tanks. SB 386 allows for a certain period of time, the removal of underground storage tanks, with the capacity of 1,100 gallons or less and if they are leaking reimbursement will be given. After that date, there will no longer be any reimbursement, but the bill does not require that the tanks be removed. **REP. OHS** said the tanks would not be filled if they aren't permitted. The tank won't have a tag on it after a certain date and unless there is a tag, fuel will not be put in it.

REP. FUCHS said people do have to remove their underground storage tanks. For a certain period of time, if they discover they are leaking, they can get reimbursed. That is the incentive.

REP. STORY said if a person has an underground storage tank it doesn't matter whether or not it is permitted, if it leaks that person is responsible for the costs because it is an illegal activity. The bill doesn't exempt a person from that provision of law. It merely states that if the tanks aren't out of the

ground by a certain date, the owners will be responsible for any clean up costs.

REP. TASH said the purpose of the bill is to get the tanks out before they leak and harm the environment and to relieve the owners' liability concerns. There is little likelihood that properties can be disposed of that have underground fuel storage tanks.

REP. RANEY said the bill states that tanks with the capacity of 1,100 gallons or less are not considered underground storage tanks. Therefore, these tanks don't fall under any of the laws.

REP. HARPER said the leaking underground storage tank program was established so a person who had a leaking tank could get some help in cleaning it up. SB 386 would let the state close the books on all these tanks because the state knows there have been leaks that haven't been reported and it wants to cover itself.

Tape 5, Side A

REP. JAY STOVALL said the bill merely gives people the incentive to remove their underground storage tanks. If they don't have that incentive, they will take the fill cap up and leave them in the ground and there will be pollution. SB 386 is a good bill for the environment.

REP. ELLINGSON said the bill's definition of underground storage tanks doesn't include tanks with the capacity of 1,100 gallons or less. In that case, if it is still in the ground after the window of opportunity time has elapsed, there would be no need to get a permit for its removal and the services of a licensed installer wouldn't have to be obtained for the closure. The state would lose any possibility of overseeing the final closure of the tank and if there is a bad leak it's possible no one will find out about it.

REP. TASH said inspections of tanks that are removed would still be done by local health officers. Pollution isn't coming from the smaller tanks. No one can afford to repeatedly fill an 1,100 gallon tank if it is known that it leaks. The high price of fuel now dictates that the owner isn't going to find it affordable to fill a leaking tank.

REP. SWANSON said she agreed that the incentive is to get the tanks out of the ground.

REP. RANEY said there wouldn't be an incentive to get the smaller tanks out of the ground because the bill excludes them in the definition of underground storage tanks.

REP. OHS said he used to have underground storage tanks but took them out. His neighbors didn't remove their tanks. The tanks have to be registered. The tanks can't be filled unless they

meet certain criteria. They have to be inspected to make sure they aren't leaking and certain reports have to be sent in to the state. The state will not let anyone put a tank in the ground and let it continue to leak.

REP. RANEY said if the tanks no longer fall under the underground storage tank law, they don't have to be registered and they could be filled. SB 386 excludes the smaller tanks from that law.

REP. FUCHS asked **Michael Kakuk, EQC,** to comment on **REP. RANEY's** statement that smaller tanks would no longer fall under the underground storage tank law if SB 386 is passed. **Mr. Kakuk** said it was his understanding that **REP. RANEY** is correct. The only reason that bulk fillers have to go through the process of making sure a tank is tagged and has been inspected is because they are currently defined as underground storage tanks. There is an incentive to take the tanks out because if they are leaking there may be some reimbursement. Everyone understands the dangers of storage tanks. However, SB 386 could be seen as an incentive to put more storage tanks in because they wouldn't be regulated.

CHAIRMAN KNOX said he had found from talking to many agricultural people, that they are scared of underground tanks and if they ever get them out of the ground they won't put anymore back in.

Motion/Vote: Voice vote was taken. **Motion that SB 386 be concurred in as amended carried 10 to 8. REP. HARPER, REP, TUSS, REP. EWER, REP. STOVALL, REP. ELLINGSON, REP. TASH, REP. RANEY and REP. TREXLER voted no.**

EXECUTIVE ACTION ON SB 406

Motion: **REP. PAUL SLITER MOVED SB 406 BE CONCURRED IN.**

Motion: **REP. DAVID EWER MOVED AMENDMENTS TO SB 406.**

Discussion:

REP. EWER said the amendment strikes subsection (3) of SB 406. Under subsection (3) the bill limits the responses to inquiries. Line 18 of subsection (3) states that responses must be limited to the date in the underground storage tank system was removed or closed in-place and to whether or not evidence of a release was reported. State government inquiries can't be limited. **REP. EWER** said he runs seven programs at the state Board of Investments. He is required to answer all inquiries except for material such as financial statements that need to be kept confidential in the interest of private parties.

REP. SCOTT ORR said he agreed with the wording in subsection (3). All anyone needs to know is when the storage tank was removed or closed in-place and whether it leaked.

REP. TASH asked **REP. EWER** if the sponsor was aware of the amendment. **REP. EWER** said he hadn't talked to **SEN. NELSON** about the amendment.

REP. HAL HARPER said another way subsection (3) could be amended would be to say that the department's response would be limited to information already on file. There would be a big government secrecy problem if the department is allowed to release only certain information to the public.

REP. TASH asked **Michael Kakuk,** to respond to **REP. HARPER's** statement. **Mr. Kakuk** said article 2, section 9 of the Montana Constitution states that no person shall be deprived of the right to examine documents of a public body or agency of the state government except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure. For SB 406 to stand as it is, it would have to be argued that the information on file is not a public document, which would be difficult under existing case law, or that the merits of individual privacy for the tank owner outweighed the merits of public disclosure. If it deals with potential groundwater contamination, the latter would also be very difficult to argue.

Vote: Voice vote was taken. **Motion to amend SB 406 carried unanimously.**

Motion/Vote: **REP. EWER MOVED SB 406 BE CONCURRED IN AS AMENDED.** Voice vote was taken. **Motion carried 15 to 3. REP. HARPER, REP. RANEY and REP. WAGNER voted no.**

ADJOURNMENT

Adjournment: 7:30 pm

REP. DICK KNOX, Chairman

ALYCE RICE, Secretary

DK/ar

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL DATE 3-20-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Knox, Chairman	✓		
Rep. Bill Tash, Vice Chairman, Majority	✓		
Rep. Bob Raney, Vice Chairman, Minority	✓		
Rep. Aubyn Curtiss	✓		
Rep. Jon Ellingson	✓		
Rep. David Ewer	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Karl Ohs			
Rep. Scott Orr	✓		
Rep. Paul Sliter	✓		
Rep. Robert Story	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson	✓		
Rep. Lila Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss	✓		
Rep. Doug Wagner	✓		

HOUSE STANDING COMMITTEE REPORT

March 21, 1995

Mr. Speaker: We, the committee on **Natural Resources** report that **Senate Bill 386** (third reading copy -- blue) **be concurred in as amended.**

Signed: Dick Knox
Dick Knox, Chair

Carried by: Rep. Orr

And, that such amendments read:

1. Page 6, line 27.
Following: "RESIDENTIAL"
Insert: "underground storage"

2. Page 6, line 29.
Following: "RESIDENTIAL"
Insert: "underground storage"

-END-

Committee Vote:
Yes 10, No 0.

650924SC.Hbk

HOUSE STANDING COMMITTEE REPORT

March 21, 1995

Mr. Speaker: We, the committee on **Natural Resources** report that **Senate Bill 406** (third reading copy -- blue) **be concurred in as amended.**

Signed: Dick Knox
Dick Knox, Chair

Carried by: Rep. Orr

And, that such amendments read:

1. Page 1, lines 17 through 20.
Strike: subsection (3) in its entirety

-END-

Committee Vote:
Yes 15, No 3.

650921SC.Hbk

EXHIBIT 1
DATE 3-20-95
SB 346

Testimony of Beartooth Alliance on SB 346

March 20, 1995

Mr. Chairman, members of the committee, for the record my name is Jim Barrett, I represent the Beartooth Alliance, a citizens group in Cooke City, Montana. I am here as a volunteer.

SB 346 is an attempt by the Dept. of Health and Environmental Sciences to accommodate mining interests who are faced with acquiring permits to discharge pollutants into streams which are presently impaired in one or more of the parameters which determine their classification. The impetus for this legislation is principally a result of a petition submitted by Noranda\Crown Butte to the Board of Health and Environmental Sciences to rewrite the rules which designate I class streams in Montana. A part of this petition is a request by Noranda\Crown Butte to reclassify streams near Cooke City to 'I', the lowest class , because of historic mine pollution that may have been exacerbated by exploration activity carried out by this Canadian gold mining company.

When this bill was presented to the Senate Natural Resource committee, I testified as a proponent with reservations as to the ability of this legislation to attain its stated goals of cleaning up water bodies affected by the actions of man. There have been statements made by members of the legislature that the pendulum of water protection regulation has swung too far to the left and SB 330 and SB 331 (and I include SB 346), are purported attempts to swing that pendulum back to the middle. I would submit that the pendulum is presently to the right of center. One has only to look at the level of degradation many of Montana's water bodies are enduring from historic and contemporary activities to see that we have a long way to go in order to strike a balance between our actions and the level of insult they inflict upon our natural world. SB 346 which must be considered collectively with SB 330 and SB 331, does not go far enough toward the middle to be considered for enactment.

SB 346 does not identify criteria that establish which water bodies would be subject to temporary modification. Federal Law delineates six specific instances under which designated uses can be removed. SB 346 should incorporate these exceptions

as part of the bill and clearly state that they will be referred to in considering any temporary modification.

SB 346 does not incorporate the existing requirement for the state to establish total maximum daily loads (TMDL's) which would identify all sources of pollution thereby providing a picture for the regulator of the real condition of a water body and help determine the subsequent level of cleanup that would be possible.

SB 346 should state explicitly that no temporary modification may be permitted until all other avenues for cleanup have been exhausted and then only for the parameter which is preventing the attainment of the beneficial uses. In addition, temporary modification should only apply to the individual permit applicants and not the entire water body. This must be clearly stipulated in the temporary modification to prevent other polluters on the water body from similarly applying for a temporary modification which effectively increases pollution. There should never be an opportunity for increasing discharges as a means to clean up a water body. This is both illogical and almost always results in furthering an impairment.

Finally, water quality standards should be strengthened (or ratcheted) as improvements in water quality are reached which reflect an accurate assessment of the stream's condition as a result of the implementation of permit requirements. Compliance with the cleanup schedule should be expedited rather than delayed and modifications of an implementation plan should be based on the availability of technology to meet the schedule rather than allowing the submission of a revised plan which serves only to delay and postpone with the end result of avoiding cleanup.

The Beartooth Alliance opposes SB 346 in its present form and asks the committee to consider the implications of SB 346 as it relates to SB 330 and SB 331 which cumulatively retreat from good sense, but more importantly disregard the Montana constitution which declares our inalienable right to a clean and healthful environment and that the legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources. Thank you for the opportunity to testify in opposition to SB346

A designated use can be removed only if :

1. naturally occurring pollutant concentrations prevent the attainment ot the use (as is the case with thermal waters, which do not support aquatic life because of temperature, sulfates and salts).

2. natural, ephemeral, intermittent or low flow conditions of water levels prevent the attainment of the use.

3. human caused conditions or sources of pollutuin prevent the attainment of the use and canot be remedied, or would cause more environmental damage to correct than to leave in place.

4. dams, diversions, or other hydrologic modifications preclude the attainment of the use, and it is not feasable to restore the water to its original condition.

5. physical conditions related to natural features of the water body (such as depth, pools, and flow) preclude attainment of aquatic life protection.

6. controls more stringent than those required by sections 301 (b) and 306 of the Act would result in substantial and widespread economic and social impact (as might occur if a very small community were forced to build a multi-million dollar water treatment facility).

Northern Plains Resource Council

EXHIBIT 2
DATE 3-20-95
SB 346

Testimony of Florence Ore
for the Northern Plains Resource Council
on Senate Bill 346
before the House Natural Resources Committee
March 20, 1995

Mr. Chairman, members of the Committee, for the record, my name is Florence Ore. I am a retired postmistress and I live in Pony, Montana. I am speaking today on behalf of members of the Northern Plains Resource Council, as Secretary of NPRC's Board of Directors and Chair of NPRC's Hard Rock Mining Task Force.

I stand in support of the testimony given by Jim Barrett on behalf of the Beartooth Alliance. I also stand in support the intent of SB 346 to provide a workable mechanism to ensure that Montana waters, which have suffered damage from past pollution, are cleaned up so they will once again support the greatest possible range of beneficial uses. In order to ensure that SB 346 accomplishes its intent, I urge the committee to adopt amendments which would:

- provide stricter criteria which must be met in order for the board to consider granting a temporary modification of water quality standards; and

- require a more enforceable accountability process and stricter timetable for successful completion of the clean up plan by the permitee who is granted a temporary modification of water quality standards.

Without these additional controls, I fear that SB 346 could do more harm than good for Montana's waters.

EXHIBIT 3
DATE 3-20-95
SB 347

Comments presented to House Natural Resources Committee concerning SB347.

March 20, 1995

Mr. Chairman, members of the committee, my name is Ronald Buentemeier, Lands Manager for F. H. Stoltze Land & Lumber Co. at Columbia Falls, Montana. Stoltze is the oldest family owned Lumber Company in Montana with the mill at Halfmoon being established in 1923. I have been lands manager for 34,000 acres of land in Northwest Montana for the last 31 years.

Today you are considering SB347, which is concerned with granting access across State Trust Lands. At the Senate committee hearing, Senator Crismore mentioned, we should all be good neighbors. Stoltze has been a good neighbor for the past 72 years in dealing with our neighboring landowners and access across our ownership. Under current Montana Law there appears to be some legal implications that the Department of State Lands feel prevents them from granting reciprocal access for Forest Management activities on forested land. We all recognize that we must be good stewards of our forest lands, one of our most precious resources. However, current procedures have done little for the land and much for the bureaucracy.

Much of the State Trust Lands, in the Northwest part of the State, are scattered in many locations similar to some of Stoltze ownerships. This scattered ownership makes management of any kind difficult at best. To have any management you must have access to your property. Because of the scattered nature, it is in everyone's best interest to be good neighbors and cooperate by granting single or reciprocal access. It is very shortsighted by either party to deny access because you will most likely pay at some point.

I have been dealing with the Department of State Lands on access for many years. We currently have 7 requests for access filed, dating back to 1989. After two months of frustration, I was able to meet with DSL at the Northwestern Land Office on December 22, to discuss the status of the various requests. Notes of this meeting, and letters I have sent to various people, including Bud Clinch and Governor Racicot, are included with my response. You will find that each request was discussed in detail. Some of the points covered were:

1) The Northwestern Land Office had made the decision about one year ago to concentrate on obtaining easements to State ownership and not spend time on other easement requests. They are to be praised for recognizing the importance of access to State Lands, but the decision may be short sighted.

2) Because of Grizzly Bear habitat near the valley edge , one request could not go any further unless Stoltze was willing to do and pay for the analysis required with no assurance that access would be granted.

3) Another request, near the upper end of Whitefish Lake, needed to be coordinated with a State Timber Sale. If access is granted, there will be timing and operating restrictions imposed.

4) A request near Beaver Lake is being delayed for several more years while DSL goes through the current bureaucratic process. DSL has begun the process, but, initial public meetings showed that management will be very controversial and difficult in the area.

5) On another, Stoltze and several other private landowners encouraged DSL to improve the road locations out of a riparian area. The landowners had agreed to provide gravel on the road in the new location in exchange for everyone getting easements across State land. This would be a win situation for the resource, the State Trust Lands, private landowners, and Stoltze!! Problem here is, that Stoltze must agree to do all of the leg work and pay the cost of the survey.

Everyone is concerned about the quality of Land Management that is being done on our Forest Lands. Industry and private landowners have been working very hard

through Best Management Practices and the Streamside Management Act to do a QUALITY land management job. The recent BMP audits show that we are doing a better job. Two audits, of Stoltze Land, show that we exceeded the requirements 6 times and met them 71 times, out of a total possible 77. Stoltze has also been recognized as doing a quality Forest Management job by other forest land owners and many private individuals. This all shows that DSL should only concern themselves with the access across State Trust Lands and not management on adjoining ownerships. This bill will help clarify the responsibility of the Department of State Lands and their obligation to be a good neighbor.

Because of the current course of events, Stoltze feels their only recourse is to deny a current access request by State Trust Lands across Stoltze ownership. This is NOT our preferred alternative. We want to be good neighbors , and have a common sense solution to a mutual access problem. This should be a simple reciprocal easement for timber management purposes!!

Thank you for your time. I will answer any questions at the appropriate time.

Ronald H. Buentemeier

Timber & Lands Manager

December 30, 1994

Bill O'Brien
Northwestern Land Office
Department of State Lands
2250 Hwy 93 N.
Kalispell, MT 59901

Re: Right-of-way requests to cross State Lands

Dear Bill,

On Thursday, December 22, 1994, I met with Bill Wright, Ted Giesey, and Stan Billheimer, at your office to discuss the status of our requests for access across State Land in Northwest Montana. Ted opened the meeting by explaining that your office had made the decision about one year ago that Stan would spend his time on gaining easements to Trust Lands as the priority and all other requests would have a lower priority to be worked on only as time permitted. To date nine easements have been recorded to State Land. I applauded the State for recognizing the importance of gaining access to State Land, but also pointed out the short sightedness of this decision. The State can not expect private landowners to be cooperative in granting easements to the State if requests by private landowners are being delayed or denied. Stan and Ted also mentioned that the regulations regarding granting of R/W's were changing almost daily adding to their problems.

A review of the R/W requests made by Stoltze was made.

I. Rhodes Draw
   a. Initially began in November, 1989.
   b. Road Use Permit dated July 26, 1990
   c. Letter of agreement signed October 24, 1990.
   d. Extension letter December 20, 1991.
   e. Route survey was done by Stan Billheimer and John Ulrich (Stoltze Forester) in the fall of 1990.
   f. Road built and graveled in the fall of 1990
   g. Discussions with all parties in February - March 1992 regarding exchange of easements.

h. During 1993 contacts made with Stan regarding progress.
I. October 1994 contacted Bill about concern with no progress on several R/W requests.
j. November 1994 contacted Bill to set up meeting to discuss R/W's. This resulted in December 22, 1994 meeting.

Decisions on December 22, 1994 were as follows:

1. Stoltze will contract to have the entire route (approximately 5 miles) surveyed and plats prepared to State standards.
2. Stoltze will provide Bill with ownership map of watershed so he can determine proportionate shares based upon acres.
3. Stoltze will prepare a list of roads each party needs.
4. Stoltze will evaluate width of R/W needed on various roads.
5. Stoltze to determine, through contact with other parties, how deeds should be prepared.
6. Stan Billheimer will prepare another extension letter.
7. State will make this R/W request top priority on private list behind eight other easements to trust land.

II. Hollinberg - Birch Creek

a. Verbal request made during August, 1993.
b. Formal request made January 17, 1994.
c. Ron Buentemeier and Beverly O'Brien had phone conversation May 17, 1994.
d. Floyd McCubbins (Stoltze Forester) and Beverly met and discussed proposed route and alternate route. State is favoring the alternate route and only a temporary Road Use Permit. Permanent easement will require a MEPA document, supplied and paid for by Stoltze, and two to five years of time.
e. There is *no assurance* to Stoltze that a permanent easement will ever be granted under these terms.
f. Any easement will most likely have restrictions which will limit property ownership.

Decisions on December 22, 1994 were:

1. Ted will check to see if the Land Board will give preliminary approval when EA complete. Survey and documentation will then take place.
2. Stan will check to see if there are restrictions, can they be handled by a letter of agreement instead of in the deed.
3. Stoltze will be in a holding pattern until these questions are answered.

III. McLelland - Swan Lake

a. Request sent August 9, 1994 to Glenn Gray, found out December 22, 1994 that this is on a boundary and in Bill Wright's working circle.
b. No response until December 22, 1994.

Decisions on December 22, 1994 were:

1. Bill is writing adjacent landowners and plans to have package to Stan by February 1, 1995.
2. Stoltze will send in "new" formal request form along with survey plat and narrative.

IV. Ashley Lake Section 36:

a. Request sent January 5, 1993.
b. Letter from Stan January 14, 1993 informing Stoltze of needs.
c. Stoltze sent $50 permit fee on January 15, 1993.
d. Road Use Permit issued September 20, 1993.
e. Stoltze discussed with Stan the present survey that Plum Creek has on this road. It was decided that Stoltze would need to do a new survey because standards have changed and the old survey is no longer adequate.

Decisions on December 22, 1994 were:

1. Stan will again check old survey and let Stoltze know by early January how to proceed.

V. Blue Grass

a. Stoltze sent a letter on October 1, 1993 supporting the timber sale and encouraging cooperation between all landowners to acquire permanent easements at the time the sale is made.
b. Ron Buentemeier attended the November 15, 1993 open house to discuss the sale and again encouraged cooperation to gain permanent access.
c. Stoltze granted the Road Use Permit requested by the state on March 18, 1994. The state was not happy that they were required to pay $50 for the permit. Ron again stresses the need for cooperation to gain permanent access.
d. On August 29, 1994 Beverly O'Brien responds by sending several easement applications to Ron and suggested he coordinate landowners, surveying, and documentation.
e. Ron wrote Bill on October 23, 1994 about no mention of a permanent easement in the timber sale package.
f. Beverly wrote Rem Kohrt (Stoltze General Manager) on November 21, 1994 updating sale progress and again encouraging Stoltze to do coordination.

Decisions on December 22, 1994 were:

1. Contact State Lands Board about R/W policy that allows the collection of R/W fees from eight owners to use the same road. This has to be "double dipping" at it's finest.
2. Ron will decide if he wants to be the "good guy" and coordinate this easement request.

VI. King Creek

a. Prior to 1990 Ron had discussed with Tom Vars the possibilities of coming across State Land using old and new roads. Both old and new roads

had problems so we never came to a solution.

b. March 2, 1990 Stoltze made a formal request to use roads across State Lands.
c. March 6, 1990, March 20, 1990, April 17, 1990, March 4, 1992, August 4, 1992, and February 16, 1993 letters all refer to this project.
d. October - November 1994 phone calls from Norm Kuennen, regarding project.

Decisions on December 22, 1994 were:

1. Ted will get some clarification from Tom Vars. The State is reluctant to give permanent easement because activities on private land could have an impact on state land.
2. Ron pointed out this is the same problem that the Hollinberg - Birch Creek project has and the same comments hold true.

VII. Beaver Lake

a. Initial request was part of the Beaver Lake response, February 24, 1993.
b. State and county are working to clear up the R/W problem through the Keister property, which will result in a county road to State Land.
c. There is a big conflict with local residents regarding timber harvest on State Lands, approximately 6000 acres, and management of private lands in the area.
d. Local residents are considering zoning to limit future development and activities.

Decisions on December 22, 1994 were:

1. Bill is looking at an alternate route through Skyles Lake area, but it does not look feasible because of road grades and needed private R/W.
2. Ron will make another formal request for R/W.
3. The State is not optimistic that this easement will be granted soon.

VIII. Haskill Basin

a. The State has requested, on October 5, 1994, a Road Use Permit and permanent easement for Section 16, T31N, R21W. This permit would allow them to sell 500,000 to 1,000,000 board feet of sawtimber.

Decisions on December 22, 1994 were:

1. Stoltze will consider the Road Use Permit and permanent easement at a later date.

Under current regulations and priority directions there are at best three of the above eight R/W requests that can be moved to completion by December 31, 1995. We realize that the interests of the School Trust Lands must be taken care of first. However, current direction is neither insuring access to trust land nor to private land.

Our company has always been a cooperator in the past and want to be a cooperator in the future. However we must insure that the company's interests are protected. We do not feel it is in the best interest of the company to continue to grant road use or right-of-ways to others without our requests being handled in a prompt and fair manner. For the above reasons we will not grant a Road Use Permit or permanent easement for the State to use our roads to gain access to Section 16, T31N, R21W at this time. We realize that the people of Montana and Stoltze are losers by this decision. Resolution of the R/W issue must be a priority issue.

Your attention is appreciated.

Sincerely yours,

Ronald Buentemeier
Timber & Lands Manager

CC: The Honorable Marc Racicot, Governor
Rem Kohrt, Stoltze Land & Lumber Co.
Bud Clinch, Director, State Office, Department of State Lands
Don Artley, Department of State Lands, Division of Forestry
Bill Wright, Department of State Lands, Kalispell Unit
Ted Giesey, Department of State Lands, Kalispell Unit
Stan Billheimer, Department of State Lands, Kalispell Unit
Glenn Gray, Department of State Lands, Swan River Unit
Tom Vars, Department of State Lands, Stillwater Unit
Cary Hegreberg, Montana Wood Products Association

RB:tk

December 29, 1994

Bud Clinch, Director
Department of State Lands
P.O. 201601
Helena, MT 59620-1601

Dear Bud,

I have enclosed a copy of a letter I have sent to Bill O'Brien, Northwestern Land Office, concerning several Right-of-Way requests we have pending. The current approach that the State is taking concerning Right-of-Ways is very short sighted. The State should be taking a proactive role in solving Right-of-Way problems. You can not manage the School Trust Lands without access. A cooperative approach will bear much more fruit.

Any help you can give in solving our joint problem will be appreciated.

Sincerely yours,

Ronald Buentemeier
Timber & Lands Manager

CC: The Honorable Marc Racicot, Governor
Encl.
RB:tk

MEMORANDUM

TO: Bill Schultz, Supervisor State Land Management Section, Forestry Division, Jeanne Fairbanks, Supervisor Special Uses Section, Forestry Division

FROM: Ted L. Giesey, Manager Forestry and Lands Programs, Northwestern Land Office, Department of State Lands

DATE: December 22, 1994

SUBJECT: STOLTZE RIGHT-OF-WAY REQUESTS ACROSS SCHOOL TRUST LAND

Ron Buentemeier, Stoltze Land & Lumber Company met with NWLO (Bill Wright - Kalispell Unit Manager, Stan Billheimer - NWLO Real Estate Specialist, & Ted Giesey) on 22 December, 1994.

In no uncertain terms, Buentemeier pointed out that DSL needs right-of-ways from Stoltze to manage our Trust Lands (just as Stoltze needs DSL's r/w's to access their lands). He pointed out a FY 1995 Kalispell Unit timber sale (Haskill Basin) that **can't** be sold without Stoltze approving a permanent r/w request!

I honestly related that NWLO had prioritized work on private sector r/w's: #1) Public highways & utilities serving a lot of people, #2) Industry r/w's, #3) private driveways serving one or a few individuals. Also, I pointed out a change in NWLO's r/w program of actively working on our own permanent r/w needs to access Trust Lands. (NWLO had little activity over the past 10 years in securing permanent easements for DSL Trust Lands. As a result of this change in the past one year, DSL now has 9 easements recorded in the Flathead & Lake County Courthouses).

A second big concern raised by Stoltze was the loss of "private property rights". That is, where DSL may impose mitigation or restrictions on Stoltze's management. For example, DSL proposed stipulating seasonal closures for grizzly bears in the right-of-way deed based upon -- in Buentemeier words "self imposed standards/guidelines". However, I do believe Stoltze is willing to cooperatively work with DSL and both of us be able to reach our resource management goals by signing a separate Memorandum of Understanding regarding how we deal with Grizzly bears, hydrology, etc.

The participants went through the following Stoltze r/w applications and discussed their status:

EASEMENT:	DATE RECEIVED:	LOCATION:	TYPE REQUEST:	COMMENTS:
Rhodes Draw	January, 1990	S 16, T29N, R23W	Permanent r/w	Road built with road use permit. Original intention was to exchange r/ws. Some survey problems. Temporary easement needs extension.

Narrative:

Decided Stoltze needs to hire a licensed surveyor to survey 4.2 Miles of road access they need across the State section. Surveyor probably should survey the main road in Section 15, T29N, R23W for DSL's permanent access needs--NWLO will budget dollars to pay for after July 1, 1995. Wright & Buentemeier to figure and agree on tributary acres for Stoltze and Montana Forest Products, and DSL lands. (Montana Forest Products lands are under a cooperative management agreement with Stoltze). Will likely need to prepare 2 sets of applications and plats (1 set for Stoltze and Montana forest Products, 2nd set for Chuck O'Neil & Jyos).

Billheimer will begin work on this easement in early January, 1995 and get the package to the Land Board upon receiving and processing the applications and survey plats from Stoltze this winter.

EASEMENT:	DATE RECEIVED:	LOCATION:	TYPE REQUEST:	COMMENTS:
Birch Creek	January, 1994	S 2 & 11, T27N, R19W	Permanent r/w	Wet Lands. Grizzly Bear Mgt. Area already part of road closures. Stoltze to do the EA.

Narrative:

Stoltze is willing to come in from the Jewel Basin Road (from the north), and drop their southern access route request because DSL has identified water quality problems with the route. Stoltze is not willing to have grizzly bear seasonal use restriction put in a r/w deed. (Property rights infringement). Stoltze is willing to specify no spring operations (probably to July 1) and is agreeable to road closures because this is critical spring grizzly bear habitat. Stoltze would be willing to sign a Memorandum of Understanding with DSL to stipulate this. Stoltze was told they have to contract or prepare the appropriate environmental documentation (EA or EIS) to DSL standards for our approval. Stoltze may be willing to do this, but decision has to be made yet. If Stoltze completes the EA and it is DSL's decision to approve, Stoltze wants preliminary approval from the Land Board before they commit the additional dollars to hire a surveyor to survey and prepare the plat. Will the Land Board give a preliminary approval?

EASEMENT:	DATE RECEIVED:	LOCATION:	TYPE REQUEST:	COMMENTS:
Swan Lake East shore	September, 1994	S 24, T26N, R19W	Permanent r/w	Needs field review. Request out to specialist for comments.

Narrative:

This r/w appears to be routine. Survey and plats have already been completed for Stoltze. Stoltze needs to get DSL the application and plats (by early January, 1995). Wright to complete his recommendations by February 1, 1995. Billheimer to process package in February, 1995. Anticipate sending r/w to the Land Board and receiving (if approved) r/w deeds for Stoltze by May, 1995.

EASEMENT:	DATE RECEIVED:	LOCATION:	TYPE REQUEST:	COMMENTS:
Whites Basin	August 9, 1994	S 16, T27N, R21W	Road Use Permit	Kalispell Unit completed package and sent it to LO 10/14/94.

Narrative:

Whites Basin Road Use Permit issued by NWLO to Stoltze on October 25, 1994.

EASEMENT:	DATE RECEIVED:	LOCATION:	TYPE REQUEST:	COMMENTS:
King Creek	March 2, 1990	S 29, T32N, R22W	Road Use Permit	Stoltze (McCubbins) anticipated r/w needed in 1997 (moved up to 1994).

Narrative:

DSL must still bring the newly constructed King Creek Road up to finish standards (anticipate American Timbers completion during the summer of 1995). DSL would then be able to grant Stoltze Land & Lumber Company a temporary road use permit.

EASEMENT:	DATE RECEIVED:	LOCATION:	TYPE REQUEST:	COMMENTS:
Beaver Lake	February 29, 1994	S 20, T31N, R22W	?	R/W requested 2/24/94 by Stoltze. Stillwater Unit does not have any record of this application--please send copy.

Narrative:

At present, DSL does not have a legal right-of-way into Beaver Lake. Therefore, DSL cannot grant any permanent or temporary easements to the private lands behind State ownership.

If and when DSL gains permanent easement, then we will suggest all interested parties (seven or more have expressed r/w interest) act together and share in the costs. Costs include preparing a environmental analyses or environmental impact statement, and also survey costs for the various road segments.

cc: Cal. File
Stoltze Land & Lumber Company
Bill O'Brien
Stan Billheimer
Kalispell Unit
Stillwater Unit

DEPARTMENT OF STATE LANDS
FIELD OPERATIONS DIVISION

MARC RACICOT, GOVERNOR

STATE OF MONTANA

NORTHWESTERN LAND OFFICE
P.O. BOX 7098
KALISPELL, MT 59904-0098

Telephone: (406) 752-7994
FAX: (406) 752-7993

January 6, 1995

Ronald Buentemeier
Timber & Lands Manager
F. H. Stoltze Land & Lumber Co.
P.O. Box 1429
Columbia Falls, MT 59912

Dear Ron:

Thank you for your letter of December 30, 1994, regarding Stoltze's right-of-way requests to cross State trust lands.

I certainly appreciate your frustration at the apparent lack of progress in processing the rights-of-ways you have requested. We too are frustrated and disappointed that we have not been able to provide better service in this area of responsibility.

I understand the need for all major forest landowners to cooperate on providing access to each other. As you know, we have placed top priority on providing temporary access for timber harvest. You have pointed out, however, our progress on your requests for permanent access has been very slow. We have found it difficult to address access needs to trust land, along with the needs of other landowners. Our resources in this area have been essentially fixed, while the demand has escalated rapidly for both private sector and school trust right-of-way needs. Your patience up to now is appreciated.

With two exceptions, your letter is an accurate summation of the situation to date and actions both parties feel can be accomplished in the next couple of years.

The first exception is Rhodes Draw. You state it is behind eight other easements to school trust lands. In fact, Rhodes Draw is the fourth right-of-way on the overall list. I have had Ted provide the following priority listing of all Northwestern Land Office right-of-ways in progress:

1.	Van Derhoff	(Private Sector)
2.	Van Derhoff	(Trust Lands)
3.	Stoltze-McLelland-Swan (III)	(Private Sector)
4.	Stoltze-Rhodes Draw (1)	(Private Sector)
5.	Stoltze-Rhodes Draw	(Trust Lands)

6.	Montana Power Co.	(Private Sector)
7.	Keister	(Trust Lands)
8.	Cadenhead	(Private Sector)
9.	NEWCO International	(Private Sector)
10.	Marquardt	(Trust Lands)
11.	Beller	(Trust Lands)
12.	Stoltze-Hollinverg Birch Creek (II)	(Private Sector)
13.	Owen-Hurst Leasing	(Private Sector)
14.	Confederated Salish Kootenai Tribes	(Private Sector)
15.	Confederated Salish Kootenai Tribes-Selow T.S.	(Trust Lands)
16.	Kiser	(Trust Lands)
17.	Hewitt/Tilton	(Trust Lands)
18.	Nelson	(Private Sector)
19.	Montana Dept. of Transportation-Lion Springs	(Private Sector)
20.	Eslick	(Private Lands)
21.	Johnson	(Trust Lands)
22.	Micklon (two easements)	(Private Sector)
23.	Kootenai N.F. (two easements)	(Private Sector)
24.	McFeely	(Private Sector)
25.	Mary B. Subdivision	(Private Sector)
26.	Montana Dept. of Transportation-Foy's Canyon	(Private Sector)

(Roman numerals refer to those in your letter.)

The second exception is that no formal applications for easement across Blue Grass Ridge (Section 36, T29N, R23W) and Beaver Lake (Section 20, T31N, R22W) have been received, but we are aware of your desire to obtain these rights-of-ways. At the Blue Grass Ridge open house, we told all the adjacent landowners present that it was in their best interest to coordinate and share in the right-of-way survey. DSL is available to provide information on easement requirements, but we do not feel it is our responsibility to coordinate this effort for private landowners.

Roman Numerals IV Stoltze-Ashley 36, V Stoltze-Blue Grass, VI Stoltze-King Creek, and VII Stoltze Beaver Lake will be added to the list and prioritized as pending questions are cleared up and applications and plats (as determined to be required) are submitted. As soon as you provide DSL with the Swan and Rhodes Draw survey plats and applications, processing of these easements will begin.

You should also be aware that the priority action list is subject to revision quarterly to semi-annually as the steady stream of right-of-ways applications come in. Applications from public utilities and highways generally have a higher priority than private or trust land needs.

I have asked Ted to give me a quarterly update on the progress of Stoltze's outstanding requests. I have also asked that he contact you in three months time to review progress with you and update the "action

plan" as necessary. In this way, I feel we can establish and maintain reasonable progress and good communications.

I am committed to completing the priorities as outlined in your letter where DSL has the applications and plats and am hopeful that you will grant us the permanent easement needed for the Haskill sale.

Sincerely,

William E. O'Brien
Area Manager
Northwestern Land Office
Department of State Lands

cc: Commissioner Clinch
Don Artley
Governor Mark Racicot

Lim

Please return -

DEPARTMENT OF STATE LANDS

FEB 2 REC'D

MARC RACICOT, GOVERNOR

P.O. BOX 201601

STATE OF MONTANA

(406) 444-2074

1625 ELEVENTH AVENUE
HELENA, MONTANA 59620-1601

January 31, 1995

Ron Buentemeier
Stoltze Land & Lumber Co.
Box 1429
Columbia Falls, MT 59912

Dear Ron:

First, my apology for such a delay in response to your December 29th letter. Ever since January 1st with the legislature in town, life has been at a dog trot

As I understand it, the Department has been less than responsive to your requests for easements. Recognizing that I can certainly understand your decision to not grant DSL's request for access to section 16 T31N R21W. In fact such action may well be what it takes to bring this issue to a head. As you may well know, similar situation exists with Plum Creek Timber as well.

It is certainly my intention and direction to staff that we must be fair in both our requests and action on others requests. Requesting easements for our use but acting unfavorable on reciprocal requests is an unacceptable approach under this administration. As you may well know, our guiding parameters revolve around our "trust" responsibilities. While we are obligated to protect our current and future trust options, such an approach should not preclude reasonable cooperation among interested parties.

This issue of easements is becoming a higher profile topic across all our lands. Consequently the Department needs to adopt some comprehensive guidelines to address this increasing controversy. In addition to action on your requests, I assure you that the Department will keep you apprised of any development of easement guidelines. As you may know, at least one bill is pending before the 1995 legislature addressing the Department's responsibilities in considering right-of-way requests.

Thank you for alerting me of your concerns. I'll do my best to untangle the web.

Sincerely,

Bud

Arthur R. Clinch, Commissioner
Department of State Lands

jc

c: Bill O'Brien
Cary Hegreberg, MWPA
Governor Marc Racicot

APPLICATIONS FOR RIGHTS-OF-WAY ON STATE LAND

All agencies or persons interested in putting a project on School Trust Lands should contact the area office that handles the county in which the request is made. Contact with the area or unit office should be made before an actual survey is done. After an on-site inspection, the Area Manager will consider whether the project is in the best interest of the trust. If there are no problems, a survey may be conducted and formal application may be made. All easement applications should be sent to the prospective area offices for review. Attached is a listing of area offices and the counties they manage.

Application

1. An original and one copy of the completed application.

2. An original and one copy (or two copies) of the plat or survey.

3. A statement signed by the State Surface Lessee which indicates they have made arrangements for compensation for leasehold damages, if any.

4. A completed Department questionnaire must accompany the application.

5. A non-refundable $50.00 application fee must accompany the application when submitted, before any processing will begin.

6. The application must be signed in a manner which reflects the name of applicant as you wish it to appear on the easement right-of-way deed.

Survey Requirements

1. The survey must be prepared by a licensed surveyor or a certified engineer.

2. The legal subdivision or metes and bounds description must appear either on the survey or at the top of the reverse side of the easement application. The surveyor need sign only the survey plat. It is not necessary for that person to sign in the survey space on the application if the plat is signed.

3. Immediately above the signature are spaces to indicate the acreage requested from each 40-acre subdivision or government lot.

4. If the application is being made for a road or utility right-of-way, the survey is normally a metes and bounds centerline description.

5. If the requested right of way will cross more than one section of trust land, the survey may include all State tracts on one survey, However, this is not applicable to the application. A separate legal description and application must be made for each section of land on which the application is made. (Separate records are kept in our files on each section, and a separate deed is issued for each section.)

Charges

1. Charges for the easement or acreage known as the taking will be based on the market value of the parcel the easement crosses. If the State parcel is appraised at $500 per acre, the acreage identified in the easement will be based on the $500 per acre. Example: if the easement area is one acre, the fee charged for the easement will be one acre x $500, or $500.

2. If the easement request includes an existing road, a fee for a share of the value of the road will be assessed in addition to the land value.

3. Before the State sells an easement, the Surface Lessee is given the opportunity to be compensated for any damages to Department-approved leasehold interests, such as but not limited to roads, crops, summer fallow, forage, water developments, buildings and fences.

Easement Deed

1. The State will retain the right to sell minerals, other non-conflicting uses, and to sell additional right-of-way easements.

2. After the Land Board has approved the right-of-way request, a bill and a draft deed will be sent to you.

3. After the Department has received payment for the right-of-way, a deed will be issued to you.

Processing and Timeframes

A right-of-way application can take up to 12 months to process. Please contact the area or unit office in the area of your proposed project regarding timeframes for your easement request.

EASEMENT REQUEST QUESTIONNAIRE

Please complete this form and attach it to your application.

Legal Description of property intended for access.

Section _____ Township _____ Range _____ # of acres _____

When was the property purchased?

What was the purchase price?

State the need or necessity of the easement request.

List alternative means of access and reasons why the alternative route is not acceptable.

State the intended use of road (i.e., private, non-commercial, subdivision, number of lots accessed, timber management, agricultural etc.

State if utilities will be included in the easement. _____

If so, indicate the types; i.e., overhead, underground, telephone, power, cable T.V. and/or other, including locations and widths.

State if the easement request involves an existing road or if new construction is necessary.

Attach map of area indicating private ownership and state ownership.

APPLICATION FOR RIGHT OF WAY EASEMENT IN STATE LANDS

(Application Fee -- $50.00)

The best method of describing the land needed for the right of way in all such cases is to describe the centerline and give the width on each side.

Please locate the starting point of the proposed right of way by giving its distance and bearing from the nearest public survey monument in the same section; then give the bearing and distance of each course of the line; and locate the terminus in the same manner as the starting point; whenever the line intersects a quarter section line, locate the point of intersection in the same manner also.

The description given in the application wil be copied into the right of way deed. It must be so definite and complete that from it the right of way may readily be located upon the ground without the plat.

If the right of way runs through an intervening tract which is *not state land*, it may be shown on the tracing or plat, but *must not* be included in the description in the application as this might result in errors in writing the deed.

No application should include land in more than one section. Show the acreage required for the right of way in each forty-acre tract of *State land* in the place provided in this blank.

The application must be signed by or for the applicant, and certified correct by the endorsement of the engineer. *Write the name of the applicant exactly the way it is to appear in the deed.*

TRACING OR PLAT. Tracings or plats must accompany the application. These tracings or plats should be so plain that anyone can readily ascertain the section, township and range and see what forty-acre tracts the right of way runs through. A scale of 1 inch to 400 feet is commonly used.

There must be two copies of the tracing or plat duly verified by the affidavit of the land surveyor who has prepared the same endorsed thereon. They must show the "quantity of land taken by the proposed highway or street or other easement from each forty-acre tract or government lot of State land over or through which it passes and also the amount of land remaining in each portion of such forty-acre tract or government lot." (Part of Section 77-2-102(2) Montana Code Annotated)

For the sake of reference other than State lands may be shown ont he plat, but they should be indicated by different colors. *If the proposed right of way follows a river or railroad right of way or other right of way, such river or right of way should be shown and also the area of the intervening strip, if any.*

The affidavit of the surveyor or engineer to be endorsed on the *tracing or plat* should be substantially in the following form:

STATE OF MONTANA,

SS.

County of _____

_____, being duly sworn says: That he is the _____ who made the survey of the right of way shown hereon; that the survey was correctly and accurately made; that the tracing or plat thereof is true and accurate and that it correctly shows the quantity of land required for the right of way in each forty-acre tract or government lot and also the amount of land remaining in each portion of such forty-acre tract or government lot.

_____

Subscribed and sworn to before me this _____ day of _____, 19 _____

_____

Notary Public for the State of Montana

Residing at _____

My Commission Expires _____

_____ Montana, _____, 19____

To the State Board of Land Commissioners
State of Montana
Helena, Montana:

Application is hereby made under the provisions of Section 77-2-101 through Section 77-2-107 of the Montana Codes Annotated, 1979, and Acts amendatory thereto by _____

EXHIBIT 4
DATE 3-20-95
SB 347

February 15, 1995 **Senate Bill 347**

Mr. Chairman, members of the committee, I am Lech Szumera from Missoula, MT, and would like to testify on Senate Bill 347. I am the Supervisor of Access for Plum Creek Timber Company. In addition to harvest and reforestation planning for company lands, I am responsible for acquiring access for our lands as well as granting access to our neighbors.

Generally, dealing with access issues is not particularly time consuming. We typically grant access to private parties, ranchers, or even competing businesses, in a matter of weeks. Other private interests reciprocate with access to us in approximately the same time frames. However, this does not hold true when dealing with the Department of State Lands. Even the most straightforward access request often takes the better part of a year, and sometimes much longer.

Not obtaining access, by the State, or other parties, has several consequences. Foremost among these is that accessed land has a significantly higher market value than unaccessed land. By not having ready access to all lands, the State is forced to concentrate activities on a smaller land base rather than dispersing actions over a wider area. The lack of access also provides a temptation to reduce investment in timber stand improvement activities - such as precommercial thinning - making them less productive and exposing them to risk of loss from insects or disease. Uneven age timber management also becomes less attractive. After all, why take the risk of leaving significant numbers of large trees on site as part of a harvesting prescription when they may not be available in the future? Finally, approval of this bill would require less manpower to process access needs.

Streamlining access serves to increase the efficiency of all parties, and provides an incentive to good, long-term land management Therefore, Plum Creek supports this legislation..

Examples:

Boles Cr. - Originally requested by PC in 9/93.
Denied due to "restrictions of DSL options"
Not really sure why. Cumulative effects?
Requested that PC do Biological Assessment for S. 36
Wanted to meet to approve PC approach on S.1

Crystal Cr. - Took 1 to 1.5 years.

Swan State Forest - Deny PC access due to conflicts with G-Bear BMA's.

Private we have granted:

Marjus, Fish Cr. - 3 weeks.

ITT - 3 to 4 weeks.

EXHIBIT 5
DATE 3-20-95
SB 347

AMENDMENTS TO
SB 347
(Third Reading Copy)

1. Page 1, line 12.
Following: "easements"
Insert: "For an easement granted pursuant to this subsection, the board may waive all or a portion of the survey requirements of 77-2-102, subject to any conditions the board may impose."

-End-

EXHIBIT 6
DATE 3-20-95
SB 371

Amendment to SB 371
(H) Natural Resourses
March 20, 1995

1. Page 10, line 14.
Following: "hiking,"
Insert: "hunting,"

Greater Yellowstone Coalition

EXHIBIT 7
DATE 3-20-95
SB 371

Comments on SB 371. Submitted to the Montana House of Representatives Natural Resources Committee -- March 20, 1995.

Good afternoon Mr. Chairman, members of the committee. My name is Brian Kuehl. I represent the Greater Yellowstone Coalition based in Bozeman, Montana. The Greater Yellowstone Coalition works to protect the environment, communities, and sustainable economies in Greater Yellowstone including portions of Carbon, Sweetgrass, Park, Gallatin, Beaverhead, and Madison counties in Montana.

The Greater Yellowstone Coalition supports this bill with a few minor amendments. One of the most problematic elements of this bill is a provision that was introduced as an amendment in the Senate Natural Resources Committee with little comment or consideration. This provision includes mineral exploration activities within the "non-significant" category that was established for the non-degradation rules.

Mineral exploration activities should not be included as "non-significant" for two reasons. First, the Water Quality Division listed industries in the "non-significance" category only if those industries were regulated by another agency such that they would be unlikely to degrade state waters. For example, drilling by the oil and gas industry is listed as "non-significant" because the use of drilling fluids and procedures is tightly regulated by another state agency. Unlike the existing "non-significant" categories, mineral exploration is not similarly regulated by the Department of State Lands. Because of this, mineral exploration may, and often does, result in significant degradation of our state's waters.

Second, this committee should reject the inclusion of mineral exploration as a "non-significant" activity because of the interplay between SB 371 and SB 331. Section 8, sub (1) of SB 331 prohibits the Department of Health from requiring treatment for industries that are neither listed under 40 C.F.R., Chapter I, Subchapter N, and that are included within the "non-significance" category. Because the federal regulations could be read as not establishing minimum treatment standards for mineral exploration, and because SB 371 now includes mineral exploration within the "non-significance" category, these two bills may have the unintended, or perhaps intended but unrevealed, result of prohibiting the Department from requiring treatment for mineral exploration activities.

Perhaps you remember that the Department of Health settled a lawsuit in 1993 with Noranda Minerals for discharging nitrates from the Montanore exploration project without a permit. As a result of that settlement, Noranda Minerals is working with the Department of Health to get a permit regulating the ongoing

P.O. Box 1874 • Bozeman, Montana 59771 • (406) 586-1593 • FAX (406) 586-0851

discharge of pollutants from that project. If this bill passes unamended, the Department of Health may no longer have the authority to require treatment of discharges from exploration projects, even though those discharges may result in substantial pollution to our state's waters.

Why would we wish to give the mining industry special treatment at great cost to our rivers and streams? Why would we wish to tie the hands of the Department of Health? As currently written, SB 371 and SB 331 may prohibit the Department from requiring treatment, even if that treatment would require only a nominal cost and would keep substantial pollutants out of our state's waters. As a matter of common sense, I urge you to amend SB 371 to remove mineral exploration from the category of "non-significant" activities, and to amend SB 331 to permit the Department of Health to require treatment of pollutant discharges when it finds such treatment to be necessary.

Thank you for your time and consideration.

EXHIBIT 8
DATE 3-20-95
SB 371

Northern Plains Resource Council

Testimony of Florence Ore
for the Northern Plains Resource Council
on Senate Bill 371
before the House Natural Resources Committee
March 20, 1995

Mr. Chairman, members of the Committee, for the record, my name is Florence Ore. I am a retired postmistress and I live in Pony, Montana. I am speaking today on behalf of members of the Northern Plains Resource Council, as Secretary of NPRC's Board of Directors and Chair of NPRC's Hard Rock Mining Task Force.

Although I appreciate the efforts of Senator Grosfield and the Environmental Quality Council staff in constructing SB 371, in its present form, I find it seriously flawed.

The stated intent of SB 371 is to establish a workable system for identifying and protecting Outstanding Resource Waters. The operative word here is "outstanding." If something is described as "outstanding," I think most reasonable people would agree that "outstanding" is something we value highly, want to maintain in its "outstanding" condition and are willing to protect. SB 371 does not ensure that all of Montana's oustanding water resources will get the protection they need and deserve. Once again, as with so many other bills we have seen this session, this bill contains provisions that unfairly slant it toward allowing more damage of Montana's pristine waters solely to accommodate the convenience and profitability of polluting activities.

The following provisions of this bill are unacceptable as part of a workable system for identifying and protecting Outstanding Resource Waters:

1. On page 2, line 28-30, under the definition of Outstanding Resource Waters, (15), (a), limits the definition to those surface waters located wholly within the boundaries of areas designated as national parks or wilderness areas. This provision excludes, from ORW protection, some of our most valuable rivers, including the north fork and the middle fork of the Flathead River which form part of the boundary of Glacier National Park, and a portion of the Yellowstone River where it forms the boundary of Yellowstone National Park. Furthermore, this provision excludes from ORW protection any and all groundwater located in

First, on page 9, lines 11 & 12, (2), (A), the bill exempts, as non-significant, "existing activities that are nonpoint sources of pollution as of April 29, 1993." and then in (2), (B) also exempts such activities initiated after April 29, 1993 "when reasonable land, soil and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected." This provision sets up a inequitable scenario where some nonpoint polluting activities are free to do whatever they want and others are held to reasonable standards that ensure protection of beneficial uses, simply by virtue of where they fall relative to an arbitrary political calendar. Again, what's the point here? Are we trying to protect our water or facilitate it's pollution?

On page 10, lines 24 & 25, new section 6, (2), (P) adds to SB 371's shopping list of nonsignificant activities "metallic and nonmetallic mineral exploration performed in accordance with Title 82, chapter 2, parts 3 and 4." This addition represents a potentially huge additional threat to our pristine waters since mining exploration is, almost exclusively, carried out in high elevation, extremely fragile, headwaters areas. Much of what I have witnessed during this Legislature would lead me to believe that Montana has been catapulted back in time, to the days of the copper kings. However, mining exploration today, is no pick and shovel, Gabby Hayes and burro operation—it is large scale, involves lots of heavy equipment and can be a substantial threat to water quality. Metallic and nonmetallic mineral exploration should not be considered nonsignificant under the Water Quality Act and this bill.

I urge the Committee to make the changes to SB 371 I have suggested. If you do, at least some small, but extremely valuable portion of Montana's outstanding water resources will have a chance of getting the protection they deserve.

EXHIBIT 9
DATE 3-20-95
SB 386

Amendments to Senate Bill No. 386
Third Reading Copy

Requested by Senator Devlin
For the Committee on Natural Resources

Prepared by Todd Everts
March 14, 1995

1. Page 6, line 27.
Following: "RESIDENTIAL"
Insert: "underground storage"

2. Page 6, line 29.
Following: "RESIDENTIAL"
Insert: "underground storage"

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Natural Resources COMMITTEE BILL NO. SJR 15

DATE 3-20-95 SPONSOR(S) Senator Harp

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Tom Daubert	Ash Grove Cement Co	X	
Steve Browning	Columbia Falls Aluminum Co.	X	
Haley Beaudry	Emerald Engineers Inc	X	
John Fitzpatrick	Pegasus Gold	X	
David Owen	MT Chamber	X	
Peggy Trenk	WETA	X	
Allen Barkley	Columbia Falls Aluminum Co.	X	
GAIL ABERCROMBIE	MONTANA PETROLEUM ASSN.	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Natural Resources COMMITTEE BILL NO. SB 346

DATE 2-20-95 SPONSOR(S) Senator Forrester

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Larry Brown	Ag Pres. Asso	346		X
Jim Barrett	BA Cooke City	346	X	
Brian Kuehl	Greater Yellowstone Coalition	346	x	
John P. Davis	ARCO	346.		X
James D. Jensen	MEIC		X	
Heidi Barrett	Cooke City MT	346	X	
Haley Beaudry	Emerald Engineers Inc	346		X
John Fitzpatrick	Pegasus Gold	SB 346		X
Deborah Smith	Sierra Club	346	X	
Gloria Ore	NPRC	346		X
Karl Abercrombie	MT Petroleum Assn	346		X
GARY LANGLEY	MONTANA MINING ASSN	346		X
STEVE PILCHER	MDHES	346		X
Andrea Strader	NPRC	346	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Natural Resources COMMITTEE BILL NO. SB 347

DATE 3-20-95 SPONSOR(S) Senator Crismore

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
LECH SZUMERA 140 W. Russell, Missoula, MT	Plum Creek Timber Co.	SB 347		X
Bud Clinch	DSL	347		X
Peggy Trow	WETO	347		X
Deborah Smith	Salmon Club	347	X	
Ronald Buentemeier	F. H. Stoltze Land & Lbr	347		X
Nancy C. Kaufman	Montana Forest Products	347		X
Cary Hegreberg	MT Wood Prod. Assoc.	347		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Natural Resources COMMITTEE BILL NO. SB 371

DATE 3-20-95 SPONSOR(S) Senator Grosfield

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Peggy Trenk	WETA	371		X
Larry Brown	Ag Pres Assoc.	371		X
Lorna Frank	MT. Farm Bureau	371		X
Lance Clark	MT. Realtors			X
MIKE MURPHY	MT. WATER RES. ASSN	371		X
Jim Barrett	BA Cooke City	371	X	
Brian Kuehl	Greater Yellowstone Coalition			
Jim Jensen	MEIC	371	X	
Heidi Barrett	Cooke City	371	X	
Haley Beaudry	Emerald Engineers Inc	371		X
John Fitzpatrick	Pegasus Gold	371		X
David Owen	MT Chamber			✓
John Bloomquist	MT. Stockgrowers	371		✓
Andrea Stricker	NPRC	371	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Natural Resources COMMITTEE BILL NO. SB 371

DATE 3-20-95 SPONSOR(S) Sen. Mayfield

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Allen Barkley	Columbia Falls Aluminum			X
Deborah Smith	Sierra Club			
Dave W. Johnson	MT Outfitters & Guides	371		X
Tom Allen	MT. Wood Products Assn.	371		✓
Florence Ike	VPRC	371	X	
Gail Abercrombie	MT Petroleum Assn	371		X
GARY LANGLEY	MONTANA MINING ASSN.	371		X
Russ Ritter	MT Resources	371		X
Lorna Frank	Farm Bureau			X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **Rep. Dick Knox, Chairman,** on March 21, 1995, at 3:00 pm.

ROLL CALL

Members Present:
Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Paul Sliter (R)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: Rep. David Ewer (D)
Rep. Cliff Trexler (R)
Members Absent: None

Staff Present: Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: None
Executive Action: SB 331 Be Concurred In As Amended
SB 346 Be Concurred In As Amended
SB 347 Be Concurred In As Amended
SJR 15 Be Concurred In
SB 349 Be Concurred In As Amended
SB 371 Be Concurred In As Amended
SB 330 Postponed Until 3-22-95

Tape 1, Side A

EXECUTIVE ACTION ON SB 331

Motion: **REP. BILL TASH MOVED SB 331 BE CONCURRED IN.**

Motion/Vote: **REP. TASH MOVED TECHNICAL AMENDMENTS TO SB 331. EXHIBIT 1** Voice vote was taken. **Motion carried unanimously.**

Motion: **REP. TASH MOVED SEN. BECK'S AMENDMENTS TO SB 331. EXHIBIT 2**

Discussion:

Alan Joscelyn, Attorney, explained **SEN. BECK's** amendments.

REP. TASH asked **Mr. Joscelyn** if any of the amendments change any of the assumptions on the fiscal note. **Mr. Joscelyn** said the assumptions related to the bill before it was amended in the Senate so they don't necessarily apply to the bill.

REP. HAL HARPER said if the committee passes the amendments it would be rewriting Montana's water quality laws. **REP. HARPER** said he wouldn't vote for the amendments or the bill. Montanans want their water protected. Water quality in the state is declining and SB 331 will hasten it.

REP. TASH said he respected **REP. HARPER's** expertise in water quality but accepted the amendments because the Department of Health and Environmental Sciences (DHES) has worked very carefully to ensure SB 331 would provide the direction the department needs.

REP. BOB RANEY asked **Abe Horpestad (DHES)** to explain amendment no. 8. **Mr. Horpestad** said amendment no. 8 ensures that if EPA comes up with a drinking water standard more stringent than the risk level specified in SB 331, the department will adopt the stricter standard.

Vote: Voice vote was taken. **Motion on SEN. BECK's amendments carried 12 to 6. REP. RANEY, REP. HARPER, REP. CARLEY TUSS, REP. EMILY SWANSON, REP. JON ELLINGSON and REP. DAVID EWER voted no.**

Motion: **REP. TASH MOVED SB 331 BE CONCURRED IN AS AMENDED.**

Discussion:

REP. TASH said SB 331 has had a lot of time and effort put into it. The bill offers industry reasonable and practical compliance rules it can work with and are stringent enough to protect the environment.

REP. RANEY said last session HB 401 was passed, which he protested, because the purpose of the bill was to lower water quality standards. There was a long session, with public involvement, in the writing of new rules. The rules that were

developed still didn't satisfy the industries that want to exploit Montana waters for the purpose of making money. That is why SB 330 and SB 331 were composed. The citizens of Montana won't profit from the bills, but industries will.

REP. HARPER agreed with **REP. RANEY** and said SB 330 and SB 331 aren't DHES bills, they are industry bills. In fact, the person who explained the amendments, represents industry. SB 331 will seriously weaken Montana's water quality in the near future and that impact will worsen as time goes on.

Vote: Roll call vote was taken. **Motion carried 12 to 6. REP. RANEY, REP. ELLINGSON, REP. EWER, REP. HARPER, REP. SWANSON and REP. TUSS voted no.**

EXECUTIVE ACTION ON SB 346

Motion: **REP. JAY STOVALL MOVED SB 346 BE CONCURRED IN.**

Motion/Vote : **REP. HAL HARPER MOVED AMENDMENTS TO SB 346. EXHIBIT 3** Voice vote was taken. **Motion carried unanimously.**

Motion: **REP. STOVALL MOVED SB 346 BE CONCURRED IN AS AMENDED.**

Discussion:

REP. BOB RANEY asked **Abe Horpestad, DHES,** if a permit was really needed to make a stream better. **Mr. Horpestad** said currently, when a permit is issued, water quality standards have to be met. In many cases that can't be done. SB 346 enables the department to write a temporary permit that can be complied with while the water is being cleaned up. **REP. RANEY** said as far as he was concerned, a permit that is issued for 20 years is not a temporary permit. **Mr. Horpestad** reminded **REP. RANEY** that the permit would be effective up to 20 years. There will also be a review every three years and if necessary, a public hearing will be held.

REP. BILL TASH said SB 346 is a solution bill that gives industry the opportunity to work within a reasonable, temporary permit allowance, to get the streams cleaned up.

REP. ROBERT STORY said SB 346 is the department's recognition of reality.

REP. HAL HARPER said he would put his faith in the department and support the bill.

Vote: Voice vote was taken. **Motion carried unanimously.**

EXECUTIVE ACTION ON SB 347

Motion: REP. PAUL SLITER MOVED SB 347 BE CONCURRED IN.

Motion/Vote: REP. BILL TASH MOVED AMENDMENTS TO SB 347. EXHIBIT 4 Voice vote was taken. **Motion carried 17 to 1. REP. CLIFF TREXLER voted no.**

Tape 1, Side B

Discussion:

REP. RANEY said he didn't think section 1, subsection 2 was needed in the bill. The language seems to discourage the Department of State Lands (DSL) from analyzing potential impacts of activities that may occur on private and federal lands that adjoin state lands.

REP. ROBERT STORY said it bothered him when state processes are used to control what someone does on their privately-owned land. The department has said that it will analyze potential impacts of activities if it believes it warrants it.

Motion: REP. STORY MOVED SB 347 BE CONCURRED IN AS AMENDED.

Discussion:

REP. SLITER said the bill is just a clarification of the department's current policy.

REP. HAL HARPER said any state action that may have a significant impact requires an analysis by the department. The department should not be discouraged from analyzing potential impacts.

Motion: REP. HARPER MOVED AN AMENDMENT TO SB 347 TO STRIKE THE WORDS "IS NOT REQUIRED TO ANALYZE OR" AND INSERT "MAY" ON PAGE 1, LINE 13.

Discussion:

REP. AUBYN CURTISS said she didn't agree with the amendment. Section 2 is primarily what the bill is about.

REP. TASH said he disagreed with the amendment because having to analyze potential impacts of activities on private and federal lands would complicate the department's procedure of granting access.

REP. RANEY gave an example of land in the Crazy Mountains that was privately-owned and was isolated with no access. The owner obtained a reciprocal agreement access and repaired the road so the Forest Service could get in. Then the owner turned it into a major development. The wonderful wilderness area suddenly became a developed site. **REP. RANEY** said in his opinion, the citizens

wouldn't have wanted reciprocal access granted to provide for the development of that land. The state should analyze what might happen on a section of land.

REP. LILA TAYLOR disagreed with the amendment because it would discourage reciprocal access agreements.

REP. SLITER said the language that **REP. HARPER** wants to strike is what protects the department from a lawsuit that would allege that it has an obligation to analyze potential impacts on adjoining land. It is because of the threat of lawsuits that the department is reluctant to grant reciprocal access agreements.

REP. HARPER said the Department of State Lands is not noted in the title of the bill. If it is the department's bill, it should have its name on the bill. Private land owners and the public have the right to know if potential impacts might occur.

Vote: Voice vote was taken. **Motion on REP. HARPER's failed 12 to 6. REP. RANEY, REP. HARPER, REP. DAVID EWER, REP. CARLEY TUSS, REP. EMILY SWANSON and REP. JON ELLINGSON voted yes.**

Vote: Voice vote was taken. **Motion that SB 347 Be Concurred In As Amended by REP. TASH's amendment carried 12 to 6. REP. RANEY, REP. HARPER, REP. EWER, REP. TUSS, REP. SWANSON and REP. ELLINGSON voted no.**

EXECUTIVE ACTION ON SJR 15

Motion/Vote: **REP. DANIEL FUCHS MOVED SJR 15 BE CONCURRED IN.** Voice vote was taken. **Motion carried 12 to 6. REP. BOB RANEY, REP. HAL HARPER, REP. DAVID EWER, REP. CARLEY TUSS, REP. EMILY SWANSON and REP. JON ELLINGSON voted no.**

EXECUTIVE ACTION ON SB 349

Motion: **REP. AUBYN CURTISS MOVED SB 349 BE CONCURRED IN.**

Motion: **REP. CARLEY TUSS MOVED AN AMENDMENT TO STRIKE "HEAVY METALS" THROUGHOUT THE BILL.**

Discussion:

REP. TUSS said the reason for the amendment is that in incineration, heavy metals cannot be created.

REP. SCOTT ORR supported **REP. TUSS's** amendment.

REP. JON ELLINGSON said maybe heavy metals couldn't be created, but thought there was a possibility that during the incineration

process, heavy metals could be emitted from the stack because they are in the hazardous waste that is being burned.

REP. BILL TASH asked **Charles Homer, Department of Health and Environmental Sciences (DHES)** to comment on the amendment. **Mr. Homer** said it is somewhat of a misstatement to say that heavy metals can be created in the burning process. Care should be taken about where the references to heavy metals are stricken, because the intent of section 2 of the bill is that the pollutants listed are the constituents of emissions the department needs to analyze. It would be appropriate to remove the heavy metals wording on page 5, line 30 which refers to regulating plastics. The wording should remain in page 6, lines 5, 11 and 22, which refer to the lowest achievable emission rate.

Substitute Motion: REP. TUSS MOVED REVISED AMENDMENTS TO SB 349.

Discussion:

REP. TUSS said the amendments would strike "formation" and insert "emission" on page 5, line 22, strike "creation" and insert "emission" on line 29, and strike "heavy metals" on line 30. On page 6, line 10, following the word "including", insert "heavy metals and", and strike "heavy metals" on line 11.

REP. DOUG WAGNER said he wasn't sure about the amendments because **SEN. MIKE FOSTER** wasn't available for comment on the amendments to his bill.

REP. JON ELLINGSON said most of **REP. TUSS's** amendments just clean up the existing law.

Vote: Voice vote was taken. **Motion carried 17 to 1. REP. WAGNER voted no.**

Motion: REP. ORR MOVED SB 349 NOT BE CONCURRED IN AS AMENDED.

Discussion:

REP. ORR said SB 349 duplicates federal law for the most part, but there are things in the bill that will cause Ash Grove Cement Company some real problems. The department's permitting policy is incredibly stringent now. SB 349 will make it worse and is not needed.

Tape 2, Side A

REP. RANEY said he resisted **REP. ORR's** motion. Even if SB 349 does just one thing to protect public health, it is a good bill.

REP. TASH agreed with **REP. ORR's** motion.

REP. HAL HARPER said the residents of Montana City are extremely concerned that Ash Grove wants to burn hazardous waste. SB 349

offers them some protection. There were numerous proponents to the bill and only one opponent. People's lives and the health of their children are being threatened. Inversions can become trapped in the valley for two weeks. If the cement and smelting companies don't get an order to shut down, the pollution will continue to pour into the valley and become trapped until the air pushes it out. It is time to become cautious rather than throw caution to the wind. **REP. HARPER** urged the committee to support SB 349.

REP. WAGNER said it is being assumed that Ash Grove will get a permit to burn hazardous waste. It is also being assumed that the department's permitting process won't protect public health. Those are not correct assumptions. By the time the permitting process has been completed, all concerns will have been addressed.

REP. ORR said he agreed that there is concern among the residents of Montana City, but the people that the opponent represented are also extremely concerned. Their livelihoods depend on the fuel source for the cement plant to continue to operate and to responsibly dispose of hazardous waste. The employees live in Montana City, their children attend school there and they are just as concerned as anyone else. Their concerns have been answered by good science. They know that the permitting process will protect their health. Inversions are addressed in the permitting process, as well as other upsets.

Vote: **CHAIRMAN KNOX** reminded the committee that a vote to support **REP. ORR's** motion would be a Be Not Concurred In As Amended vote. Roll call vote was taken. **Motion failed 11 to 7. CHAIRMAN KNOX, REP. TASH, REP. CURTISS, REP. ORR, REP. STORY, REP. JAY STOVALL and REP. WAGNER voted yes.**

Motion/Vote: **REP. SLITER MOVED TO REVERSE THE VOTE TO REFLECT SB 349 BE CONCURRED IN AS AMENDED.** Voice vote was taken. **Motion carried 17 to 1. REP. ORR voted no.**

EXECUTIVE ACTION ON SB 371

Motion: **REP. BILL TASH MOVED SB 371 BE CONCURRED IN.**

Motion: **REP. ROBERT STORY MOVED AN AMENDMENT TO SB 371.**

Discussion:

REP. STORY said his amendment would insert "permitted under and" after "exploration" on page 10, line 24 of the bill. The amendment would put the exploration activities under some type of regulation.

REP. BOB RANEY said he had amendments to offer that **SEN. GROSFIELD** had approved that would strike subsection (p) on page 10, line 24 of the bill.

Vote: Voice vote was taken. **Motion carried unanimously.**

Motion: **REP. RANEY MOVED AMENDMENTS TO SB 371.**

Discussion:

REP. RANEY said at **SEN. GROSFIELD'S** request, the amendment would strike 75-3-303 and insert 75-5-303. on page 6, line 15 and page 9, line 10. **Michael Kakuk, EQC,** explained that 75-3-303 deals with radiation and nuclear exposures. 75-5-303 deals with water quality. There was a drafting error.

REP. RANEY said part of his amendment is reflected on no. 2 of his original set of amendments. **SEN. GROSFIELD** added the rest of the amendment for page 6, line 15, when **REP. RANEY's** original amendments were submitted for approval.

Mr. Kakuk said the reason it wasn't added to **REP. RANEY'S** original amendments was because amendment no. 1 strikes the incorrect site and replaces it entirely.

REP. RANEY said **SEN. GROSFIELD** did not agree with amendment no. 1.

Vote: Voice vote was taken. **Motion carried unanimously.**

Motion: **REP. RANEY MOVED NO. 3 TO HIS ORIGINAL AMENDMENT. EXHIBIT 5**

Discussion:

REP. RANEY explained amendment no. 3.

REP. DOUG WAGNER, REP. STORY, REP. HAL HARPER and **REP. SCOTT ORR** disagreed with the amendment.

Vote: Voice vote was taken. **Motion failed 12 to 6.**

Motion/Vote: **REP. HARPER MOVED AN AMENDMENT TO INSERT "BASED ON" BEFORE "PENDING" IN SUBSECTION (9), PAGE 6, LINE 15.** Voice vote was taken. **Motion carried 13 to 5.**

Tape 2, Side B

Motion/Vote: **REP. WAGNER MOVED AN AMENDMENT TO INSERT "HUNTING" FOLLOWING "HIKING" ON PAGE 10, LINE 14.** Voice vote was taken. **Motion carried unanimously.**

Motion/Vote: **REP. PAUL SLITER MOVED SB 371 BE CONCURRED IN AS AMENDED.** Voice vote was taken. **Motion carried 12 to 6.**

EXECUTIVE ACTION ON SB 330

Motion: **REP. KARL OHS MOVED SB 330 BE CONCURRED IN.**

Motion: **REP. OHS MOVED AN AMENDMENT TO SB 330. EXHIBIT 6**

Discussion:

REP. OHS explained the amendment and asked **Glenn Marx, Governor Racicot's Office,** if he would comment. **Mr. Marx** said the Governor is in agreement with the amendment and it was written by him. **Governor Racicot** had parties with outfitter's licenses in mind as interested parties when he referenced licenses.

REP. BOB RANEY said a person with a fishing license, in his opinion, would have an economic stake in a stream.

REP. TASH said the purpose of SB 330 is to prove beneficial use of the state's waters and to do so in a way that doesn't entangle it with a lot of legal interpretations. **REP. TASH** suggested executive action on SB 330 be postponed until the committee can get some legal interpretations on the amendment. **CHAIRMAN KNOX** agreed and postponed executive action until March 22, 1995.

ADJOURNMENT

Adjournment: 5:10 pm

REP. DICK KNOX, Chairman

ALYCE RICE, Secretary

DK/ar

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL DATE 3-21-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Knox, Chairman	✓		
Rep. Bill Tash, Vice Chairman, Majority	✓		
Rep. Bob Raney, Vice Chairman, Minority	✓		
Rep. Aubyn Curtiss	✓		
Rep. Jon Ellingson	✓		
Rep. David Ewer			✓
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr	✓		
Rep. Paul Sliter	✓		
Rep. Robert Story	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson	✓		
Rep. Lila Taylor	✓		
Rep. Cliff Trexler			✓
Rep. Carley Tuss	✓		
Rep. Doug Wagner	✓		

HOUSE STANDING COMMITTEE REPORT

March 22, 1995

Mr. Speaker: We, the committee on **Natural Resources** report that **Senate Bill 331** (third reading copy -- blue) **be concurred in as amended.**

Signed: Dick Knox
Dick Knox, Chair

And, that such amendments read: **Carried by: Rep. Tash**

1. Page 4, line 14.
Following: "**life.**"
Insert: "(1)"

2. Page 4, line 15.
Following: "chapter"
Insert: "and except as provided in subsection (2)"

3. Page 4.
Following: line 20
Insert: "(2) If the department, based upon its review of an application submitted under subsection (1) and sound scientific, technical, and available site-specific evidence, determines that the development of site-specific criteria in accordance with draft or final federal regulations, guidelines, or criteria would not be protective of beneficial uses, the department, within 90 days of the submission of an application under subsection (1), shall notify the applicant in writing of its determination and of all additional procedures that the applicant is required to comply with in the development of site-specific standards of water quality under this section. If there is a dispute between the department and the applicant as to the additional procedures, the board shall, on the request of

Committee Vote:
Yes 12, No 6.

the department or the applicant, hear and determine the dispute. The board's decision must be based on sound scientific, technical, and available site-specific evidence."

4. Page 4, line 30.
Strike: "IF" through "USE"

5. Page 7, line 6.
Strike: "privately owned"

6. Page 7, lines 25 through 28.
Strike: "The" on line 25 through "AGENCY." on line 28
Insert: "When the department's review of a permit application submitted under another chapter or title is required or requested, the department shall coordinate the review under this chapter with the review conducted by the agency or unit under the other chapter, following the time schedule for that review."

7. Page 8, line 25.
Following: "(2)"
Insert: "(a)"

8. Page 8, line 28.
Following: "PREVENTION."
Insert: "(b)"

9. Page 8, line 30.
Strike: "(A)"
Insert: "(i)"
Strike: "MEASURING"
Strike: "IN SURFACE WATER"

10. Page 9, line 3.
Strike: ";"
Insert: ". However, if a standard established at a risk level of 1 x 10-3 for arsenic or 1 x 10-5 for other carcinogens violates the maximum contaminant level obtained from 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen."

11. Page 9, lines 4 through 6.
Strike: "(B)" on line 4 through "(C)" on line 6
Insert: "(ii)"

12. Page 9, lines 6 through 9.
Strike: ";" on line 6 through "ACT];" on line 9

Insert: "."

13. Page 10, line 7.
Strike: "TO"
Insert: "of nitrate in"
Strike: "QUALITY"

14. Page 13.
Following: line 2
Insert: "(i) the discharge does not contain industrial waste, sewage, or other wastes;"
Renumber: subsequent subsections

15. Page 13, line 4.
Strike: "OR"
Insert: "and"

16. Page 13, line 8.
Strike: "may"
Insert: "must"

17. Page 17, line 29.
Strike: "AND" through "CONSIDER"

18. Page, 19
Following: line 13
Insert: "NEW SECTION. **Section 17. Coordination instruction.** If Senate Bill No. 330 is passed and approved and if it includes a section that amends the definition of "degradation" contained in 75-5-103, then the definition of degradation provided in [section 3 of this act], amending 75-5-103, is effective and the definition provided in Senate Bill No. 330 is void."
Renumber: subsequent sections

19. Page 19, lines 15 and 16.
Strike: "SECTION" through "ACT]."
Insert: "[This act] does not apply to civil or administrative actions commenced prior to [the effective date of this act] or to claims made in those actions, except that compliance plans resulting from those actions must reflect changes made by [this act]."

-END-

HOUSE STANDING COMMITTEE REPORT

March 22, 1995

Mr. Speaker: We, the committee on **Natural Resources** report that **Senate Bill 346** (third reading copy -- blue) **be concurred in as amended.**

Signed: Dick Knox
Dick Knox, Chair

And, that such amendments read: **Carried by: Rep. Knox**

1. Page 4, line 20.
Following: "(5)"
Insert: "(a)"

2. Page 4.
Following: line 22
Insert: "(b) During the period of the temporary modification, the board may not allow a discharge that will cause water quality to become worse than the quality of the water body or segment prior to the discharge."

-END-

Committee Vote:
Yes 18, No 0.

661018SC.Hdh

HOUSE STANDING COMMITTEE REPORT

March 22, 1995

Mr. Speaker: We, the committee on **Natural Resources** report that **Senate Bill 347** (third reading copy -- blue) **be concurred in as amended.**

Signed: Dick Knox
Dick Knox, Chair

And, that such amendments read: **Carried by: Rep. Sliter**

1. Title, line 6.
Following: ";"
Insert: "ALLOWING THE BOARD TO WAIVE SURVEY REQUIREMENTS; "

2. Page 1, line 12.
Following: "easements."
Insert: "For an easement granted pursuant to this subsection, the board may waive all or a portion of the survey requirements of 77-2-102, subject to any conditions that the board may impose."

-END-

Committee Vote:
Yes 12, No 6

661021SC.Hdh

HOUSE STANDING COMMITTEE REPORT

March 22, 1995

Mr. Speaker: We, the committee on **Natural Resources** report that **Senate Joint Resolution 15** (third reading copy -- blue) **be concurred in.**

Signed: Dick Knox
Dick Knox, Chair

Carried by: Rep. Wagner

Committee Vote:
Yes 12, No 6.

661027SC.Hdh

HOUSE STANDING COMMITTEE REPORT

March 22, 1995

Mr. Speaker: We, the committee on **Natural Resources** report that **Senate Bill 349** (third reading copy -- blue) **be concurred in as amended.**

Signed: Dick Knox
Dick Knox, Chair

And, that such amendments read: **Carried by: Rep. Grimes**

1. Page 5, line 22.
Strike: "formation"
Insert: "emission"

2. Page 5, line 29.
Strike: "creation"
Insert: "emission"

3. Page 5, line 30.
Strike: "heavy metals,"

4. Page 6, line 10.
Following: "including"
Insert: "heavy metals and"

5. Page 6, line 11.
Strike: "heavy metals,"

-END-

Committee Vote:
Yes 10, No 7.

661023SC.Hdh

HOUSE STANDING COMMITTEE REPORT

March 22, 1995

Mr. Speaker: We, the committee on **Natural Resources** report that **Senate Bill 371** (third reading copy -- blue) **be concurred in as amended.**

Signed: Dick Knox
Dick Knox, Chair

And, that such amendments read: **Carried by: Rep. Curtiss**

1. Page 6, line 15.
Strike: "75-3-303"
Insert: "75-5-303 based on"

2. Page 9, line 10.
Strike: "75-3-303"
Insert: "75-5-303"

3. Page 10, line 14.
Following: "hiking,"
Insert: "hunting,"

4. Page 10, line 24.
Following: "EXPLORATION"
Insert: "permitted under and"

-END-

Committee Vote:
Yes 12, No 6.

661026SC.Hdh

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Natural Resources

DATE 3-21-95 BILL NO. SB 331 NUMBER _____

MOTION: BE CONCURRED IN AS AMENDED

NAME	AYE	NO
Rep. Dick Knox, Chairman	✓	
Rep. Bill Tash, Vice Chairman, Majority	✓	
Rep. Bob Raney, Vice Chairman, Minority		✓
Rep. Aubyn Curtiss	✓	
Rep. Jon Ellingson		✓
Rep. David Ewer		✓
Rep. Daniel Fuchs	✓	
Rep. Hal Harper		✓
Rep. Karl Ohs	✓	
Rep. Scott Orr	✓	
Rep. Paul Sliter	✓	
Rep. Robert Story	✓	
Rep. Jay Stovall	✓	
Rep. Emily Swanson		✓
Rep. Lila Taylor	✓	
Rep. Cliff Trexler	✓	
Rep. Carley Tuss		✓
Rep. Doug Wagner	✓	

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE 3-31-94

I request to be excused from the Nat Res. Committee meeting this date because of other commitments. I desire to leave my proxy vote with _____.

Indicate Bill Number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

~~HOUSE~~ Senate BILL/AMENDMENT	AYE	NO
SB 371 - Story Amend.	✓	
SB 371 - Raney #2 Amend.	✓	
SB 371 - Raney #3		✓
SB 371 - Harper	✓	
SB 371 - Wagner	✓	
SB 371	✓	
SB 330 (Gov) - Ohs Amend.		

SENATE BILL/AMENDMENT	AYE	NO
331 - tech. amendments	✓	
331 - Beck amendments	✓	
SB 331	✓	
346 - Harper Amend.	✓	
SB 346	✓	
SB 347 - Amendment?		✓
SB 347 - Harper Amend		✓
SB 347	✓	
SJR	✓	
SB 349 - Tiss Amend.	✓	
SB 349 - Orr Amend.		✓
SB 349	✓	

Rep. Cliff Strader
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Natural Resources

DATE 3-21-95 BILL NO. SB349 NUMBER _____

MOTION: NOT BE CONCURRED IN

NAME	AYE	NO
Rep. Dick Knox, Chairman	✓	
Rep. Bill Tash, Vice Chairman, Majority	✓	
Rep. Bob Raney, Vice Chairman, Minority		✓
Rep. Aubyn Curtiss	✓	
Rep. Jon Ellingson		✓
Rep. David Ewer		✓
Rep. Daniel Fuchs		✓
Rep. Hal Harper		✓
Rep. Karl Ohs		✓
Rep. Scott Orr	✓	
Rep. Paul Sliter		✓
Rep. Robert Story	✓	
Rep. Jay Stovall	✓	
Rep. Emily Swanson		✓
Rep. Lila Taylor		✓
Rep. Cliff Trexler		✓
Rep. Carley Tuss		✓
Rep. Doug Wagner	✓	

EXHIBIT 1
DATE 3-21-95
SB 331

Amendments to Senate Bill No. 331
Third Reading Copy

For the Committee on Natural Resources

Prepared by Michael S. Kakuk
March 7, 1995

1. Page 8, line 25.
Following: "(2)"
Insert: "(a)"

2. Page 8, line 28.
Following: "PREVENTION."
Insert: "(b)"

3. Page 8, line 30.
Strike: "(A)"
Insert: "(i)"

4. Page 9, line 4.
Strike: "(B)"
Insert: "(ii)"

5. Page 9, line 6.
Strike: "(C)"
Insert: "(iii)"

6. Page 9, line 8.
Strike: "(D)"
Insert: "(iv)"

7. Page 9, line 9.
Strike: ";"
Insert: "."

8. Page 13, line 8.
Strike: "may"
Insert: "must"

Amendments to Senate Bill No. 331
Third Reading Copy

EXHIBIT 2
DATE 3-21-95
SB 331

Requested by Sen. Beck
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
March 16, 1995

1. Page 4, line 14.
Following: "life."
Insert: "(1)"

2. Page 4, line 15.
Following: "chapter"
Insert: "and except as provided in subsection (2)"

3. Page 4.
Following: line 20
Insert: "(2) If the department, based upon its review of an application submitted under subsection (1) and sound scientific, technical, and available site-specific evidence, determines that the development of site-specific criteria in accordance with draft or final federal regulations, guidelines, or criteria would not be protective of beneficial uses, the department, within 90 days of the submission of an application under subsection (1), shall notify the applicant in writing of its determination and of all additional procedures that the applicant is required to comply with in the development of site-specific standards of water quality under this section. If there is a dispute between the department and the applicant as to the additional procedures, the board shall, on the request of the department or the applicant, hear and determine the dispute. The board's decision must be based on sound scientific, technical, and available site-specific evidence."

4. Page 4, line 30.
Strike: "IF" through "USE"

5. Page 7, line 6.
Strike: "privately owned"

6. Page 7, lines 25 through 28.
Strike: "The" on line 25 through "AGENCY." on line 28
Insert: "When the department's review of a permit application submitted under another chapter or title is required or requested, the department shall coordinate the review under this chapter with the review conducted by the agency or unit under the other chapter, following the time schedule for that review."

7. Page 8, line 30.
Strike: "MEASURING"

Strike: "IN SURFACE WATER"

8. Page 9, line 3.
Strike: ";"
Insert: ". However, if a standard established at a risk level of 1 x 10-3 for arsenic or 1 x 10-5 for other carcinogens violates the maximum contaminant level obtained from 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen."

9. Page 9, lines 4 and 5.
Strike: subsection (B) in its entirety
Renumber: subsequent subsections

10. Page 9, lines 7 through 9.
Strike: "AND" on line 7 through "ACT];" on line 9

11. Page 10, line 7.
Strike: "TO"
Insert: "of nitrate in"
Strike: "QUALITY"

12. Page 13.
Following: line 2
Insert: "(i) the discharge does not contain industrial waste, sewage, or other wastes;"
Renumber: subsequent subsections

13. Page 13, line 4.
Strike: "OR"
Insert: "and"

14. Page 17, line 29.
Strike: "AND" through "CONSIDER"

15. Page, 19
Following: line 13
Insert: "NEW SECTION. **Section 17. Coordination instruction.** If Senate Bill No. 330 is passed and approved and if it includes a section that amends the definition of "degradation" contained in 75-5-103, then the definition of degradation provided in [section 3 of this act] is effective and the definition provided in Senate Bill No. 330 is void."
Renumber: subsequent sections

16. Page 19, lines 15 and 16.
Strike: "SECTION" through "ACT]."
Insert: "[This act] does not apply to civil or administrative actions commenced prior to [the effective date of this act] or to claims made in those actions, except that compliance plans resulting from those actions must reflect changes made by [this act]."

EXHIBIT 3
DATE 3-21-95
SB 346

Amendments to Senate Bill No. 346
Third Reading Copy

Requested by Rep. Harper
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
March 21, 1995

1. Page 4, line 20.
Following: "(5)"
Insert: "(a)"

2. Page 4.
Following: line 22
Insert: "(b) During the period of the temporary modification, the board may not allow a discharge that will cause water quality to become worse than the quality of the water body or segment prior to the discharge."

EXHIBIT 4
DATE 3-21-95
SB 347

Amendments to Senate Bill No. 347
Third Reading Copy

Requested by the Department of State Lands
For the Committee on Natural Resources

Prepared by Martha Colhoun
March 21, 1995

1. Title, line 6.
Following: ":"
Insert: "ALLOWING THE BOARD TO WAIVE SURVEY REQUIREMENTS; "

2. Page 1, line 12.
Following: "easements."
Insert: "For an easement granted pursuant to this subsection, the board may waive all or a portion of the survey requirements of 77-2-102, subject to any conditions that the board may impose."

EXHIBIT 5
DATE 3-21-95
SB 371

Amendments to Senate Bill No. 371
Third Reading Copy

Requested by Rep. Raney
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
March 21, 1995

1. Page 6, lines 14 through 18.
Strike: subsection (9) in its entirety
Insert: "(9) The board may not take into account:
(a) a pending outstanding resource water petition when it reviews an authorization to degrade for those waters; or
(b) a request for an authorization to degrade when it reviews an outstanding resource water petition for those waters."

2. Page 9, line 10.
Strike: "75-3-303"
Insert: "75-5-303"

3. Page 10, lines 24 and 25.
Strike: subsection (2)(p) in its entirety
Renumber: subsequent subsections

EXHIBIT 6
DATE 3-21-95
SB 330

Amendments to Senate Bill No. 330
Third Reading Copy

Requested by Rep. Ohs
For the Committee on Natural Resources

Prepared by Martha Colhoun
March 21, 1995

1. Page 3, line 1.
Following: "interest"
Insert: ", which includes a permit, license, easement, or water right,"